



Ontario

ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: XIV

DATE: Thursday, June 9th, 1988

BEFORE:
M.I. JEFFERY, Q.C., Chairman
E. MARTEL, Member
A. KOVEN, Member

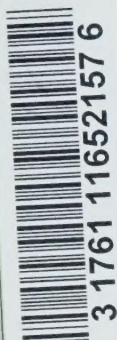
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St.
Thunder Bay, Ontario, on Thursday,
June 9th, 1988, commencing
at 8:30 a.m.

VOLUME XIV

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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A P P E A R A N C E S

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APPEARANCES: (Cont'd)

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NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>KENNETH A. ARMSON</u> , Resumed	2534
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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
62	Report of the Ontario Royal Commission on Forestry, 1947.	2549
63	Brief on Forest Management in Ontario by the Ontario Professional Foresters Association dated January, 1977.	2566
64	Article by Mr. Armson dated Feburary, 1979.	2572
65	Chapter by Mr. Armson in Report entitled: Forest Management in Canada.	2586

1 ---Upon commencing at 8:30 a.m.

2 THE CHAIRMAN: Good morning, ladies and
3 gentlemen. Please be seated.

4 Ladies and gentlemen, before we commence,
5 I have had a request from the court reporters to the
6 effect that we would like to see counsel at the various
7 tables at the back - and that would be yourself, Mr.
8 Williams, and perhaps you, Mr. Cosman, and Ms.
9 Seaborn - that when you make your submissions to the
10 Board, would you kindly use one of the microphones at
11 the table, if there is one on your table and, if not,
12 to come forward to the microphone up here. They are
13 having difficulty hearing some of the counsel who are
14 not right up at the front.

15 We are now going to embark on a discussion
16 concerning the Board's proposal made to you on Monday
17 with respect to the possibility of handling the
18 evidence-in-chief, particularly with respect to expert
19 witnesses, in a different manner than we have done up
20 to this point in the hearing.

21 I believe all of you have had the
22 opportunity to obtain a copy of the transcript of the
23 discussion that the Board had with you on Monday
24 concerning this proposal, and we asked you to be
25 prepared today to make submissions on it.

1 At the same time, we will deal with the
2 question of interrogatories, particularly as they
3 relate to this proposal, and the further question of:
4 If this proposal is adopted by the Board, how the
5 material will reach those parties who are not before
6 the Board, and that will probably be accomplished in
7 some fashion by depositing the witness statements at
8 the depositories already established for receiving the
9 transcripts.

10 As all of you are aware, this particular
11 hearing is probably one of the most complex that this
12 Board has ever held in the sense that the undertaking
13 is the first Class EA to reach the hearing stage before
14 this Board; and, secondly, the area of the undertaking
15 covers the vast majority, or at least half of the land
16 mass of this province and, as a result of that, there
17 are a number of interested parties and members of the
18 public who are unable to be before us for the
19 presentation of all of the evidence.

20 The Board has taken great pains to ensure
21 that those parties who are not before us have some
22 means of following along with what is happening at the
23 Thunder Bay location and, as you are aware, the Board
24 will be moving around the province to some 14 other
25 locations later in the proceedings.

1 The entire proceedings are being recorded
2 and transcripts of the proceedings are being provided
3 at a number of depositories located throughout the
4 province, again, to facilitate those parties who are
5 not before us to follow along.

6 Now, with respect to the presentation of
7 evidence, it is the Board's view that any method that
8 can be devised to expedite the presentation of this
9 evidence will be in both the interest of the public,
10 the interest of the party, and also the interest of the
11 Board.

12 And, in making the proposal that is
13 before you, we are suggesting that there be some
14 limitations placed on the presentation of oral
15 testimony related to the evidence-in-chief. There will
16 of course be no, and there is no suggestion of any
17 limitations placed on the documentation relative to
18 that evidence in-chief that you wish to place before
19 the Board.

20 We have suggested in the proposal a
21 limitation of two or three hours, wherein counsel could
22 lead the witnesses through their evidence-in-chief by
23 means of highlighting those areas that they consider to
24 be of importance and in doing so it would, in effect,
25 force counsel to focus their case, to the point that

1 they would have to pick and choose as to what specific
2 areas they wish to highlight before this Board.

3 The Board has indicated that it will read
4 all of the documentation presented, and any of the
5 evidence which is filed in a written form through the
6 filing of the witness statements will form evidence
7 before this Board and will be considered by the Board
8 in making its decision on this application. The only
9 area that we are suggesting will be helpful in this
10 proposal in expediting the presentation of this
11 evidence is to limit the oral presentation of the
12 evidence-in-chief which is essentially, in the Board's
13 view, in a written form and is admitted in a written
14 form.

15 The witnesses or the panels of witnesses
16 would be available for cross-examination by all other
17 parties entitled to cross-examination, and the counsel
18 leading that evidence will have the right to re-examine
19 the witnesses in the normal fashion.

20 With respect to the interrogatories, we
21 are suggesting that the same practice be followed:
22 Witness statements would be distributed, parties would
23 have the right to submit interrogatories in accordance
24 with the previous directions of the Board, replies or
25 answers to those interrogatories would follow, again,

1 in accordance with the previous directions of the
2 Board, and whether or not those interrogatories were
3 filed with the Board would be up to the parties,
4 because it may well be that some of the interrogatories
5 satisfy the parties posing them and there is no need to
6 go into it further.

7 So I think that the proposal that the
8 Board put forward will undoubtedly provoke a lively
9 discussion and the Board is prepared, at this time, to
10 entertain it.

11 Since I believe, Mr. Freidin, this
12 proposal would affect the presentation of your evidence
13 in the more immediate sense, we would allow you to
14 comment on it at this time.

15 MR. FREIDIN: Thank you, Mr. Chairman.

16 I can indicate at the outset that the two
17 matters that you mentioned in your opening remarks this
18 morning; and, that is, the complexity of this
19 particular Environmental Assessment and the area over
20 which it occurs, were two things which were uppermost
21 or fairly high on the matters that were considered by
22 my client in coming up or formulating the submissions
23 that I am going to make to the Board this morning.

24 The Ministry acknowledges the concern by
25 the Board and others regarding the length of this

1 particular hearing in a general sense, in that no one
2 wants it to take any longer than necessary. Given the
3 concern raised by the Board on Monday, June the 6th,
4 the Ministry has given serious consideration to that
5 suggestion and can assure you that, wherever possible,
6 the Ministry's desire is to be as accommodating as
7 possible in all matters, including procedural issues.

8 And if I just might, Mr. Chairman, it is
9 for that reason that the proponent has made the effort
10 to attempt to have an agreed statement of facts on
11 Panel No. 5, and it is in that vein that the Ministry
12 has spent considerable, or it has put in a considerable
13 effort in attempting to arrange site visits which we
14 believe will be helpful for the Board in understanding
15 the evidence and coming to a decision. That matter, as
16 you are aware, will be spoken to briefly this morning
17 by Ms. Murphy.

18 I reviewed the transcript of June the 6th
19 and it appears to me, Mr. Chairman, that the issue
20 which is before the Board is whether, in presenting
21 their evidence-in-chief, the Ministry of Natural
22 Resources has, as the proponent, and the Ministry of
23 the Environment, should be limited to two or three
24 hours, or perhaps some other period of time based on
25 the submissions today, be limited to two or three hours

1 of oral evidence for each panel, during which time they
2 would highlight the written evidence contained in each
3 panel's witness statement.

4 THE CHAIRMAN: By the way, Mr. Freidin,
5 this proposal would apply not just to the Ministry of
6 Natural Resources and the Ministry of the Environment,
7 but also other parties as well, with some exceptions.

8 MR. FREIDIN: Thank you for that
9 clarification but, in terms of the bottom line, in
10 terms of the submissions I am going to make, I don't
11 think that there will be a difference.

12 The submission of the Ministry of Natural
13 Resources, after giving this matter the consideration I
14 have indicated, is that limiting the proponent in the
15 manner suggested would severely prejudice the proponent
16 in the presentation of its case and, for that reason,
17 the Ministry of Natural Resources cannot consent to the
18 suggestion made.

19 The starting position is, Mr. Chairman,
20 that a party has a right, both of common law and by
21 statute, to call and examine witnesses in the manner it
22 feels is necessary to properly and fully present its
23 case.

24 In terms of the statute law that I
25 referred to, I would cite such intent of the Statutory

1 Powers Procedure Act which indicates, and I quote:

2 "A party to proceedings may, at a
3 hearing,
4 be represented by counsel or an agent;
5 (b)...",

6 And this is the emphasis at this time:

7 "...call and examine witnesses and
8 present his arguments and
9 submissions; and
10 (c) conduct cross-examination of
11 witnesses at a hearing reasonably
12 required for a full and fair disclosure
13 of the facts in relation to which they
14 have given evidence."

15 There were extensive preliminary meetings
16 in relation to this Environmental Assessment, Mr.
17 Chairman, and one of the prime matters which was
18 discussed during those hearings was the proposal made
19 by the Ministry of Natural Resources regarding the
20 method of evidence preparation and presentation.

21 It was through those meetings, and it is
22 my understanding, and it was the decision of the Board
23 that the method which was proposed at the time and the
24 method which, in fact, has been followed to date was
25 reviewed, considered and approved by the Board early

1 this year and the Ministry, based on that, has
2 proceeded, based on that approved procedure, and has
3 organized itself and its evidence preparation based on
4 that decision.

5 The Ministry, Mr. Chairman, has completed
6 six witness statements to date. I don't believe panel
7 No. 6 has been served to date, but if it is not
8 completed, it is virtually waiting to be completed and
9 many more witness statements are at various stages of
10 completion, all based on the original order of the
11 Board regarding the forum that was acceptable.

12 I can advise you, Mr. Chairman, that
13 putting the evidence together in the present form has
14 involved and continues to involve an enormous amount of
15 administrative effort and time commitments by the
16 witnesses involved, and I emphasize the witnesses
17 involved, and my reason for that emphasis, as opposed
18 to me saying the commitment by the Ministry staff
19 generally, will be made apparent later in my
20 submissions.

21 I would submit, sir, that the practical
22 and the substantive difficulty posed by the suggested
23 procedure was recognized and clearly commented upon by
24 Mr. Hunter on June the 6th, 1988 when this matter was
25 first raised by the Board,

1 I don't want to suggest that I will be
2 relying on the submissions of Mr. Hunter as a matter of
3 course in these proceedings, but I think that Mr.
4 Hunter sort of caught the nub of the problem and I
5 would like to refer the Board to the transcript of June
6 the 6th, 1988 starting on page 20.

7 Starting at line 14, Mr. Castrilli was
8 concerned about what the situation could be about
9 making copies of witness statements available at a
10 number of depositories. And he stated, starting on
11 page 14 -- and I intend to read from that point to the
12 end of page 21.

13 "MR. CASTRILLI: So at a minimum, a party
14 filing canned evidence would have to
15 reproduce approximately 50 or so copies
16 of that document?

17 THE CHAIRMAN: That is what you might
18 consider the downside. The upside would
19 be that you would be spending, hopefully,
20 a lot less time at the hearing itself in
21 terms of being around for the
22 evidence-in-chief going in in the normal
23 fashion.

24 And do you have anything, Mr.
25 Hunter?"

1 And Mr. Hunter responds:

2 "MR. HUNTER: Mr. Chairman, I think that
3 seems somewhat abstract. I know the
4 intent and concern that you are
5 addressing. I am not convinced that it
6 is going to accelerate the process simply
7 because it seems to me that, by and
8 large, the proponent would then have to
9 spend an extraordinary amount of time
10 in preparing their written documentation.

11 And I am just concerned about how
12 much more time they are going to have to
13 spend in preparing that written
14 documentation over and above the time
15 that they do now, and that's something
16 Mr. Freidin and his colleagues can
17 answer."

18 And I intend to be answering that and I
19 can indicate at this stage that it is our view that the
20 amount of additional time which would be required to
21 prepare the material, in a fashion that might be
22 satisfactory from the proponent's point of view, would
23 be greatly extended, but I think I will indicate
24 through my submissions that the proponent believes
25 that, regardless of the amount of time it might spend

1 in preparing written documentation, that this
2 particular case cannot be properly put forward in that
3 manner with a limited amount of time for expanding and
4 explaining the many technical and detailed scientific
5 matters which are going to have to be canvassed by this
6 Board.

7 Mr. Hunter continues at line 10:

8 "My concern is or would be that would be
9 a substantial problem that they would
10 have to face because they would have to
11 look at it and dot every "i" and cross
12 every "t" and that is distinctly
13 something they could deal with in direct
14 evidence. I am not sure that this is a
15 solution."

16 Mr. Chairman you responded:

17 "But if they did not deal with it in
18 direct evidence and it was a matter in
19 controversy, would it not come out in
20 cross-examination?

21 MR. HUNTER: Well, there is no necessary
22 guarantee of that, there is no absolute
23 to that.

24 And then he says:

25 "I mean, I am directing our case in a

1 certain way, Mr. Castrilli in his own
2 way, and Mr. Colborne in his way. That's
3 something that obviously Mr. Freidin has
4 to answer."

5 And I would submit to you, Mr. Chairman,
6 that in that last passage which I have emphasized, Mr.
7 Hunter is making it clear, in his view in any event -
8 and I adopt the intent as I interpret it - that the
9 presentation of one's case in a fashion that to it
10 seems appropriate is a right which is jealously
11 regarded and one which should not be lightly interfered
12 with by the courts or by administrative tribunals.

13 In my submission, Mr. Chairman, those
14 submissions alone should form the basis or sufficient
15 reason for allowing the case to be put in in the manner
16 that was directed as acceptable in February of this
17 year and to be put in in the manner which it has been
18 put in through the first two panels.

19 I would like to refer, or list some
20 additional reasons for the Ministry taking the position
21 that it is taking at this time, and the first
22 additional reason arises by reason of the nature of the
23 Environmental Assessment itself, and my remarks are
24 connected to, again, those opening remarks by the Board
25 as to the complexity of the matters to be canvassed.

1 This is the first Environmental Assessment
2 hearing regarding timber management, and with the
3 greatest of respect for the members of the Board and
4 for everyone present, the subject matter of this
5 Environmental Assessment is a new one for all people
6 concerned and the proponent firmly believes that this
7 constitutes a prime reason for its belief that it
8 cannot properly and fully present its case if the right
9 to call witnesses and lead evidence-in-chief is
10 restricted.

11 This belief is made more firm based on
12 the proponent's awareness of the technical and
13 scientific evidence which must be clearly understood by
14 the Board and the parties. The proponent is the party
15 who has the onus to explain timber management. It is
16 the proponent's undertaking that we are dealing with
17 and it is the proponent that is, with respect, Mr.
18 Chairman, in the best position to assess how that onus
19 can best be met.

20 Yesterday, there were some slides and
21 photographs used by Mr. Armson. In my submission,
22 presenting evidence in that manner is helpful. There
23 is an intent to rely on that type of visual aid
24 throughout these hearings, particularly when we start
25 talking about the actual activities themselves. And,

1 in my submission, a restriction on the evidence of the
2 type described would prevent much of that evidence or
3 make much of the evidence which has been planned to be
4 presented through slides and videos impossible.

5 Considerable efforts, time and money has been expended
6 by the Ministry of Natural Resources based on this
7 approach and perhaps I am repeating myself, but I am
8 just indicating that many of the panels cannot be
9 properly presented without reliance on this form of
10 active presentation.

11 As I have indicated, restricting oral
12 evidence as suggested would prevent the proponent
13 giving its evidence emphasize that it believes is
14 required.

15 You indicated on June the 6th, Mr.
16 Chairman, that other parties would obviously have the
17 right to cross-examine and that right wouldn't be
18 limited, except by the usual rules. I would submit
19 that to permit full cross-examination - and I am not in
20 any way, shape or form indicating that full
21 cross-examination should be restricted, it shouldn't
22 be -- I would submit to permit that full
23 cross-examination in conjunction with the suggested
24 limitation on evidence-in-chief would, to a great
25 extent, turn this hearing into a consideration of

1 criticisms and complaints only, without first having
2 received a full appreciation of the proponent's views
3 on the topics and the issues which must be decided by
4 this Board.

5 Another difficulty which arises, in my
6 submission, based on the suggested approach is one
7 connected to the topic of re-examination of witnesses.
8 You will recall, sir, that last week there were lengthy
9 discussions regarding the scope or the extent of
10 re-examination of witnesses. The concern was raised by
11 parties re that matter and without commenting on the
12 Board's ruling at that particular time sort of in a
13 general or generic basis a concern regarding the scope
14 of re-examination is, in my view, justified.

15 In my submission, the ability of the
16 Board or the parties to decide what is proper
17 re-examination would be made more difficult where
18 limited evidence-in-chief is given. I would submit to
19 you, Mr. Chairman, that it will become much more
20 difficult in that circumstance for the Board during
21 re-examination, or for the parties for that matter, to
22 determine what was or what was not part of the witness'
23 evidence-in-chief.

24 Another matter I would like to address,
25 Mr. Chairman, is the issue of credibility. I expect

1 that credibility of witnesses or some witnesses is sure
2 to become, if it already hasn't become, an issue. The
3 proponent submits that limiting the evidence-in-chief
4 the proponent's opportunity to have its witnesses'
5 credibility and knowledge properly and fully establish
6 or demonstrated will be adversely affected.

7 What the Board would end up seeing in
8 terms of the evidence from the proponent's witnesses,
9 the real first time that there would be an extensive
10 canvassing of any particular topic that they might have
11 dealt with in the written form would be during
12 cross-examination and, as you are aware, Mr. Chairman,
13 the demeanor of the witness in the box is important.
14 And, in my submission, the demeanor in terms of how
15 they deal with the issues in direct evidence, how
16 familiar they appear to be with their particular
17 subject area in their evidence-in-chief, is important,
18 just as it is important to observe how they deal with
19 cross-examination.

20 I had prepared some submissions in
21 relation to inequality of treatment and I was going to
22 deal with that matter as a result of the comments made
23 by the Board at page 13 and perhaps -- I assume that I
24 have misinterpreted the comment by the Board and I
25 would just like to ensure that that is the case.

1 Perhaps if we just go over to page 14.
2 This is where you, Mr. Chairman, were indicating that
3 the resources of the various parties might be different
4 and there may be some situations where parties do not
5 have the resources on a full-time basis to produce
6 certain things such as witness statements. And on page
7 14 at line 10 the Board stated that:

8 "It certainly would apply to the
9 Ministry, the proponent..."

10 We are talking now about the suggested
11 procedure:

12 "...and it would apply to the Ministry of
13 the Environment and, I would suggest, it
14 would probably apply, maybe with partial
15 exception, to Mr. Hunter's clients, and
16 Mr. Castrilli would probably fall in that
17 category."

18 And I interpreted that particular comment
19 as indicating that Mr. Castrilli somehow fell into that
20 category where an exception would be made.

21 THE CHAIRMAN: No.

22 MR. FREIDIN: No.

23 THE CHAIRMAN: That was the other one.

24 Mr. Castrilli clients are fully represented by counsel
25 and I think it was the Board's feeling that he would be

1 treated, for the purposes of this proposal, in the same
2 fashion as the two ministries and Mr. Hunter's clients
3 to some extent. Mr. Hunter's clients would be included
4 as a possible exception in some instances because of
5 his clients' familiarity, if I can put it that way,
6 with oral presentation as opposed to written
7 presentation.

8 MR. FREIDIN: I would hope that Mr.
9 Hunter would put in perhaps that little extra effort
10 that might be required to assist his people in -- in
11 him interpreting their oral statements to him and
12 putting it in a written form, but I don't wish to get
13 into that particular matter at this time.

14 I, therefore, submit that as a general
15 rule - and it appears that that is the Board's intent -
16 that restrictions should be -- that if instructions are
17 imposed that they should apply equally to all parties
18 of similar status.

19 THE CHAIRMAN: Well, I guess we are
20 arguing, to some extent, the similarities of that.

21 MR. FREIDIN: I would like to make two
22 general observations. Mr. Chairman, the first refers
23 to the earlier comment I made about the commitment of
24 the witnesses, as opposed to the commitment of the
25 Ministry staff generally, not to say that there isn't a

1 requirement for a substantive commitment in relation to
2 staff generally, and my comments are related to your
3 comment about resources in connection with possible
4 differentiation between parties.

5 And I would suggest that when the Board
6 considers resources, that resources is more than just
7 money; that people are resources and, in this
8 particular submission, the witnesses, as people, are a
9 resource and that only so much can be expected of those
10 people who are directly involved in this particular
11 hearing. It is not a situation where the Ministry, in
12 relation to the certain functions that I will indicate
13 to you in a moment, can just throw more bodies at the
14 evidence preparation than the other tasks.

15 The witnesses are the people who have to
16 be involved in writing the witness statements and
17 reviewing comments made during by others on drafts. It
18 is the witnesses who are the people familiar with their
19 area of evidence and, in my submission, are the people
20 who really have to provide the answers or prepare the
21 answers to the interrogatories. It is their evidence
22 that's being questioned; it is their credibility which
23 is put on the line when they are on the stand.

24 And thirdly, obviously. The witnesses are
25 the people who have the time commitment to be here and

1 to give evidence. There are a number of individual
2 witnesses who are involved in a number of evidence
3 packages and the present witness, Mr. Armson, is
4 perhaps the best example of that. As you are aware, he
5 is a witness in Panel 2, Panel 3, Panel 4, Panel 5,
6 Panel 6 - and, Mr. Armson, don't look at me too
7 sharply, but I may have some suggestions that you get
8 involved in a couple of others.

9 The witnesses who are involved, if the
10 Board's suggestion became an order, would require those
11 witnesses to do more in terms of writing evidence. As
12 Mr. Hunter indicated, the proponent would be well
13 advised, if the procedure suggested is implemented,
14 that the witness statements cross every "t" and dot
15 every "i".

16 I am sure, Mr. Chairman, everyone here
17 realizes that it takes a lot more time to explain, in a
18 written form, certain types of evidence and I would
19 suggest, Mr. Chairman, if the suggested procedure is
20 put in place that for the proponent, in any event, to
21 provide the type of detailed written documentation
22 which it believes would be required - if, in fact, it
23 could be done in any event - would not shorten, but
24 lengthen these proceedings.

25 A second observation is that you recall

1 that there has been some concern raised very early on
2 in these proceedings that people were receiving witness
3 statements too quickly, they were having to respond to
4 those things and get interrogatories out within certain
5 time limits too quickly.

6 If the Board's suggested procedure is
7 adopted, I would submit that it would result in two
8 things: It would result in more detailed witness
9 statements being prepared, and if the time periods for
10 service of those documents remains the same - and I
11 understand that that is the suggestion at the present
12 time - and the time period during which the parties
13 receiving witness statements could deal with these
14 increased or increasingly detailed witness statements
15 would be shortened -- I sort of rambled there -- at the
16 end of which, more detailed witness statements, a
17 shorter time period for evidence. If the purpose of
18 the proposal comes to fruition, as anticipated or hoped
19 by the Board, I believe we would be putting parties in
20 what would be a more difficult position to deal with
21 witness statements.

22 The final matter that I would like to
23 mention in relation to the proposal is that to date we
24 have had two panels give direct evidence. Even with
25 the procedural matters which arise from time to time,

1 both of those panels have taken approximately a day and
2 a half. I have not received any complaint regarding
3 the time taken. Much more time has been taken in
4 cross-examination but, as I indicated a few moments
5 ago, that is proper, it is the other parties' right to
6 cross-examine and I do not believe that they should be
7 restricted to something less than the usual scope for
8 cross-examination.

9 I would, therefore, submit that even if
10 the Board is inclined not to follow the usual approach
11 of allowing the party, in this case the proponent, to
12 put its case in in the manner that it sees most
13 appropriate, then I would suggest that the Board
14 consider whether making an order at this particular
15 time is premature based on what has happened to date.

16 You indicated in your remarks, Mr.
17 Chairman, that there was concern that the giving of
18 evidence-in-chief and perhaps - I don't have your
19 remarks down completely, perhaps you were talking about
20 all the evidence - could be expedited as much as
21 possible. I can assure you, Mr. Chairman, that a
22 desire to be efficient with the use of time, that the
23 desire to expedite matters is at the forefront of my
24 mind and the mind of my client and that that will
25 always be kept in mind when preparing and presenting

1 the evidence.

2 I would like to make a comment on I guess
3 a related matter and, that is, the matter of the filing
4 of documents, in this case, witness statements at the
5 various repositories which have been established.

6 If the Board orders that the procedure
7 for evidence-in-chief be as it has suggested in the
8 transcript of June 6th and, as you have outlined, Mr.
9 Chairman, then I believe the requirement to provide
10 witness statements at repositories is one that might be
11 necessary. And I say might because I will be bringing
12 to your attention information which we obtained
13 yesterday as to the level of activity at these
14 repositories in terms of looking at documents which are
15 made available there.

16 You can also take the information that I
17 am going to provide the Board with in that regard into
18 consideration if the Board considers or is considering
19 ordering that documentation such as witness statements
20 be made at those repositories, even if the suggested
21 procedure is not implemented at this time.

22 As you recall, I asked you -- I think on
23 June the 6th I was speaking to Mr. Mander about the
24 level of concern that may have been indicated to the
25 Board and you agreed that that was appropriate, and Mr.

1 Mander has advised me that three parties or persons
2 have indicated a desire or a concern about the
3 availability of witness statements generally, but those
4 three people were Mr. Axford who is a party -- or The
5 Association of Single Industry Towns is a party; Mr.
6 Axford is on the Executive of that particular group,
7 that the University of Toronto would like to have a
8 copy of the witness statements, as would Lakehead
9 University.

10 Mr. Axford has received the witness
11 statements to date, and he was on -- we've certainly
12 given him up to Panel No. 4 and I understand from Mr.
13 Mander that his concern was voiced some time ago.

14 But, in any event, it is my submission
15 that if those three groups wish to have copies of the
16 witness statements as a matter of course that my client
17 is prepared to provide them to them, but that would be
18 a more appropriate way of dealing with what has been a
19 concern voiced at this particular time.

20 In terms of what sort of activity has
21 occurred at these various centres: You appreciate that
22 it was yesterday afternoon that we were able to sort of
23 put the search into high gear. I am advised that of
24 the nine Ministry offices where transcripts are located
25 that seven of them were reached; seven of them being:

1 Bancroft District Office, Geraldton District Office,
2 Algonquin Region in Huntsville, Kapuskasing District,
3 Southwestern Region's Office in London, Northeastern's
4 Regional Office in Sudbury, and the District Office in
5 Wawa.

6 My information is that only one of those
7 offices has had anybody ask to see the Environmental
8 Assessment transcripts and that one request was Mr.
9 Baxter who appeared at the Wawa District Office to look
10 at various documents related to the hearings.

11 Ministry staff were only able to reach
12 five of the 16 public libraries where documents are
13 deposited and, Mr. Chairman, I understand that the
14 regional offices were asked to keep some sort of a
15 record or running tally as to who came in - I don't
16 believe that the same request or sort of information
17 was kept by those libraries - but my information is
18 that the Dryden Public Library has not had any request
19 to see the transcripts from the information that we
20 received yesterday, in spite of the fact that the
21 library placed an ad in the local newspaper regarding
22 the transcripts.

23 My understanding is that there was an
24 additional notice to the public as to the availability
25 of transcripts. I understand that there are a couple

1 of people a day examining the transcript at the
2 Espanola Public Library. The Timmins Public Library
3 reported that three people once came in to look at the
4 transcripts, that the library put the transcripts on
5 circulation but none of the three were signed out.

6 The North Bay Public Library, where there
7 was a considerable amount of public interest during the
8 preliminaries - as there was in Dryden, as you will
9 recall - has had one person ask to see the transcripts
10 and possibly two people in total.

11 The Peterborough Public Library reported
12 that members of the Ontario Federation of Anglers &
13 Hunters have often reviewed the transcripts, but they
14 weren't sure whether anyone else has come in to see
15 them. I don't know how they made that assessment, but
16 that is the information that we had.

17 It was interesting, sir, that we also had
18 an indication from the Dryden Public Library that if
19 they receive more material they are going to have
20 serious space problems.

21 THE CHAIRMAN: Join the crowd.

22 MR. FREIDIN: Those are my submissions,
23 Mr. Chairman. And, as I indicated at the outset, the
24 position taken has not been taken lightly, it has been
25 taken with a concern that the Board and the parties

1 have a full appreciation of what the subject matter of
2 this Environmental Assessment is about and that the
3 proponent have a full opportunity to present the case,
4 to have its undertaking approved.

5 Thank you.

6 THE CHAIRMAN: Thank you, Mr. Freidin.

7 Well, could we move on to some of the
8 other parties. .

9 Perhaps I will start with you, Mr.
10 Castrilli.

11 MR. CASTRILLI: Mr. Chairman, in light of
12 the position the Ministry of Natural Resources is
13 taking on the Board's proposal, I believe it would be
14 appropriate for other people -- other parties who
15 support the Ministry's position to speak before I do.

16 THE CHAIRMAN: Very well.

17 Mr. Cosman?

18 MR. COSMAN: I can tell the Board that
19 there are going to be times where the Ontario Forest
20 Industry Association would be departing from, and
21 disagreeing with the Ministry on certain things, but
22 today is not one of those days.

23 Perhaps I can start by just, on a light
24 note, pointing out that we are not doing so badly
25 because if you have regard to an article that appeared

1 in the Globe & Mail on the last day or so, you will see
2 that on a tax evasion trial in Toronto that is on-going
3 which started in 1984, the first witness for the
4 defence has just finished 63 days'. Cross-examination
5 is projected for several months. So I don't think we
6 should be too critical on what is happening here.

7 THE CHAIRMAN: Well, you must be advised
8 that this Board is absolutely determined that this
9 hearing will end before Hong Kong reverts back to
10 China.

11 MR. COSMAN: Perhaps we can celebrate in
12 Hong Kong, Mr. Chairman, at that time.

13 First of all, I would like to deal with
14 what I think is a red herring in the argument and that
15 is the filing of witness statements in the depositories
16 that now receive the transcripts.

17 As you yourself, Mr. Chairman, noted at
18 the end of the day, that may or any not be a necessity
19 in any event. Whether or not the parties are
20 restricted, the people who are not here who wish to
21 follow the transcripts, whether the
22 examination-in-chief took three hours or six hours,
23 still may need to have those witness statements.
24 So I think that is a discreet issue and must be always
25 considered as such.

1 Like Mr. Freidin, I analyzed what it is
2 that seems, on the surface, to be taking so long. We
3 have finished four weeks, we are into the - this is the
4 fourth week of hearing, we have had 11 days up to the
5 start of Panel 1 and I think, as Mr. Freidin pointed
6 out and I confirmed this myself, only one and a half
7 days of that was examination-in-chief.

8 So whether or not there would be a saving
9 in time - and I am not persuaded that there would be -
10 it is quite clear that that kind of saving should not
11 be sought at the expense of greater clarification of
12 the evidence.

13 In my view this is not a federal -- this
14 is not a case such as a federal regulatory hearing on
15 rates such as you have in the U.S. where canned
16 evidence is commonly received, where there are very
17 narrow issues, where the parties are generally the
18 same; this is a case with many different parties with
19 differing interests, different resource bases and
20 where, as you have pointed out, the issues are very
21 complex.

22 In highlighting evidence-in-chief it may
23 take just two or three hours, as you had suggested with
24 respect to some panels or some witnesses; with others,
25 and I know from the nature of the evidence that is

1 going to be led, it will take longer and it will be
2 necessary, in order to properly clarify the evidence,
3 for a longer period of time to be taken in the
4 examination-in-chief.

5 In my view it is not in the interests of
6 the Board, the parties or the public that either
7 attends or follows this evidence to restrict the
8 parties from doing what they consider necessary and
9 appropriate in clarifying orally the evidence in the
10 witness statements.

11 There is an additional point having to do
12 with the element of fairness. The proponent is here as
13 one party, that if we were to change the rules in
14 midstream, that party will have had, with at least six
15 panels and perhaps more, the opportunity to take the
16 time that they consider necessary, whereas the other
17 parties will be under different rules. So, in my
18 respectful view, that in itself could be a problem in
19 terms of procedural fairness in the hearing itself.

20 I have some concerns with respect to the
21 exceptions that were discussed at the hearing on June
22 6th. As I understood the exception, the one would be
23 with respect to parties perhaps who lived within an
24 oral tradition, but there was a second point made and,
25 that is, that resources would be a factor to be

1 considered.

2 And, in that respect, we could get into a
3 tremendous difficulty before this Board because this
4 case is a strain on the resources of all the parties
5 that appear before the Board. Some of those parties
6 are funded; some of those parties, like my clients, are
7 not, they are paying for this out of their own pockets
8 and I can assure you that if this hearing could be
9 shortened without the necessity of -- without
10 interfering with the proper proceeding, then we would
11 support any measure to shorten the proceeding.

12 But, at the same time, I can see an
13 argument developing down the line when various parties
14 will stand up and say: We don't have the resources,
15 such as the Ministry has, to prepare the kind of
16 witness statements that they have prepared in the
17 greater detail that would have to be prepared if this
18 new regime were adopted, and that argument would be
19 made before you, and I could make that argument
20 equally.

21 And I would submit that if that argument
22 were made, the position of my client would be no
23 different from the position of the other parties,
24 because this hearing, and the cost of this hearing, is
25 one that calls upon the scarce resource, in my client's

1 position, of people fighting for a market share in a
2 competitive international economy and where loss of
3 market share means loss of jobs with the attendant
4 impacts on the social and economic environment and, for
5 that matter, with less money generated for government
6 and with less ability to hold hearings such as this; so
7 we would fall into the same kind of category as other
8 parties. One could argue the resource allocation issue
9 in many different ways.

10 So, Mr. Chairman, in my view, I believe
11 it is a valiant effort on the part of the Board in
12 making this proposal; it is appreciated by the parties.
13 I believe it would be a mistake and that it would save
14 little actual time and diminish other important values
15 in the hearing process.

16 My suggestion to you would be to use
17 other techniques that are available to you such as the
18 provision in the Statutory Powers Procedure Act that
19 would allow you to intervene when parties are being
20 unduly repetitive and which, I submit, has not been the
21 case to date and, in that way, you can control the
22 process, you can control the process if there is an
23 abuse of that process by parties being unduly
24 repetitive in the presentation of their evidence.

25 Thank you.

1 THE CHAIRMAN: Thank you, Mr. Cosman.

2 Ms. Seaborn?

3 MS. SEABORN: Thank you, Mr. Chairman.

4 My comments are very brief.

5 Mr. Chairman, I have listened to the
6 submissions of the proponent and the proponent does
7 have the right to present its case the way it sees fit.
8 However, the Minister of Environment recognizes the
9 Board's concern about the length of the hearing and,
10 Mr. Chairman, we have not taken your comments lightly.

11 We note that we have not yet reached the
12 proponent's technical evidence and, in fact, we have
13 only heard two panels in-chief. Accordingly, it is our
14 view that concerns about the length of the hearing may
15 very well have to be addressed again as the process
16 evolves. And part of the difficulty with looking at
17 this issue at this stage is because we have not yet
18 reached this technical evidence and it is our view that
19 the amount of time that it will take for the
20 evidence-in-chief to come forward will probably
21 lengthen rather than shorten, as the hearing
22 progresses.

23 Now, having said that we support Mr.
24 Freidin in his comments that he does have the right to
25 call his case the way he sees fit, it is also our

1 submission that the Board has the right to control its
2 own procedure and, for that reason, what we would
3 encourage the Board to do is to use its authority under
4 its own Rules of Procedure to encourage all parties to
5 make the most efficient use of the Board's time when
6 parties are presenting their evidence and in
7 cross-examination and, as well, in re-examination.

8 It is also our view that parties must be
9 prepared to be flexible as this process evolves and,
10 again, we think that the Board does have the
11 jurisdiction to intervene when there are areas that
12 come up and the Board feels that any party - whether it
13 is evidence called by the Minister of Environment or
14 whether it is evidence called by the proponent - need
15 not go into certain details because the Board
16 understands that point, it is our opinion that the
17 Board has the right to tell counsel that they need not
18 hear evidence on that point.

19 With respect to Mr. Freidin's comments on
20 looking at the depositories across the province and the
21 panel evidence, whether or not it should be put with
22 the depositories, it is our submission that it is
23 really too early to conclude that there is limited
24 public interest, because we have not reached some of
25 the technical panels where members of the public and

1 groups that are not before you in Thunder Bay may have
2 an interest.

3 And so, in that regard, we think again
4 everyone should be flexible and we should see how the
5 hearing progresses and what sort of interest is found
6 at those depositories, and it may be that there are
7 just certain areas within the province where it will be
8 necessary for parties to file additional material.

9 Those are my comments. Thank you.

10 THE CHAIRMAN: Thank you, Ms. Seaborn.

11 Well, I guess it is down to you, Mr.
12 Williams, and you, Mr. Castrilli.

13 I'm sorry, Mr. Castrilli. Mr. Williams
14 has indicated you should go first.

15 MR. CASTRILLI: I trust that means that
16 he's supporting the Board's proposal. He is not
17 answering, he is writing notes.

18 Mr. Chairman, I have now had an
19 opportunity to consult with my clients on the proposal
20 the Board has made to expedite evidence-in-chief and I
21 can advise the Board that, as we stated in January of
22 this year, we are fully in support of this type of
23 initiative and I would refer, in this regard, to our
24 comments in the January 27th, 1988 transcripts in this
25 regard.

1 Frankly, as the Board is aware, the
2 proposal you have put forward or it has put forward can
3 only work if the proponent is prepared to support it,
4 because it is obvious that the proponent's case is
5 going to be the longest one in this proceeding and it
6 is the one that has obviously triggered the concern
7 about the ultimate length of this hearing, it
8 certainly isn't the length of the case that my clients
9 are going to be calling.

10 Now, as I believe we indicated in our
11 position on this in January, we have referred to the
12 experience of the Alachor Review Board and I know,
13 having appeared before that Board, that the procedure
14 you are proposing is one that can work and that can
15 probably cut the hearing time by approximately one
16 third.

17 I also believe it can serve the purposes
18 of better focusing the evidence of witnesses, for one
19 thing you actually get a bottom line on their position
20 because it is required to be summarized, and that has
21 not been the case in the witness statements we have
22 seen so far; it also obviously provides an additional
23 opportunity for summarization of the oral evidence when
24 that is put on the record; and, thirdly, it can also
25 better focus cross-examination and can, in fact, aid in

1 shortening cross-examination. So that obviously in a
2 hearing of the likely duration of this one the result
3 can be a considerable saving in time for all parties.

4 And, as I understand the Board's
5 proposal, it would in any event apply only to expert
6 witnesses and not to lay witnesses and that, I believe,
7 is the usual manner in which canned evidence is
8 applied; and I should note that it would certainly
9 apply to all or most of the evidence that would be
10 coming forward by way of my client's case. We include
11 ourselves in those parties who would be bound by the
12 Board's order.

13 As I noted on June 6th, the one residual
14 concern that we had with respect to the proposal was
15 the additional expense associated with having to file
16 more numerous copies of our witness statements in
17 depositories where transcripts are currently filed, but
18 as I understand the Board's position with respect to
19 the proposal, it is likely that some arrangement can be
20 made to support any increased costs we might incur in
21 that regard and so that, therefore, we are fully in
22 support of the Board's overall proposal.

23 Now, I should note, by the way, that Mr.
24 Hunter has asked me to make some submissions on his
25 behalf. I am going to keep those to the end after I

1 have completed my response to the oral comments I have
2 heard this morning.

3 Mr. Freidin raised a number of objections
4 or reasons why he could not or his client could not
5 consent to the proposal. I wanted to deal with them,
6 not necessarily in the order in which they were raised
7 by Mr. Freidin.

8 Firstly, he referred to Section 10 of the
9 Statutory Powers Procedure Act as support for the
10 position that he can basically call and present the
11 kind of case he wants without essentially any
12 restriction, and I think he knows -- or he should
13 know - I am sure the Board is aware - of the experience
14 before the Ontario Energy Board which regularly
15 requires that examination-in-chief be done by way of
16 canned evidence.

17 And as Mr. Freidin well knows, the
18 Ontario Energy Board, like the Environmental Assessment
19 Board, are both subject to the Statutory Powers
20 Procedure Act and if it has not been a burden for that
21 tribunal to engage in a canned evidence procedure, I
22 cannot see why it would be a burden for this tribunal
23 to do it as well without any potential violation of
24 Section 10 of the Statutory Powers Procedure Act.

25 Secondly, Mr. Freidin was concerned about

1 the ability of this tribunal to digest what he
2 describes as too technical evidence. Well, as the
3 Board is aware under its authority under the
4 Environmental Assessment Act, the Board can, if it
5 believes it is losing the paper flow or being
6 overwhelmed by complexity, it can in fact retain
7 experts to sit with it and, in fact, it is my
8 experience that the Board has, in fact, done that in
9 other proceedings.

10 So there is no reason why that could not
11 be done here if, in fact, the Board believes the
12 complexity of this hearing and the technical nature of
13 the evidence is too much for it to bear with. I don't
14 think that has been the case so far.

15 Thirdly Mr. Freidin indicated that the
16 uniqueness of this hearing requires that he be
17 permitted to present his case in the manner he has done
18 so to date; that is, examination-in-chief where we are
19 essentially going over what is already in the material
20 but there is an elaboration during the course of oral
21 evidence.

22 Well, this may be one of the first
23 environmental assessment hearings in the country on
24 forest management and, indeed, it may be one of the
25 first hearings on forest management of any type, but it

1 is certainly not a unique hearing in terms of
2 complexity; and it is certainly no more unique than
3 tribunals I have appeared before such as the Alachor
4 Review Board which was the first federal inquiry in
5 Canada on the cancellation of an herbicide and,
6 moreover, that tribunal was an ad hoc tribunal, a
7 once-only exercise, not a full-time permanent tribunal
8 such as this one. And I would further add that,
9 because canned evidence was involved in that case, it
10 was one of the indications for me that
11 evidence-in-chief can indeed be cut -- well, total
12 hearing length can be cut by approximately one third.

13 THE CHAIRMAN: Could you just advise me,
14 Mr. Castrilli, whether or not that tribunal had the
15 power to make a decision, or it was a recommendatory
16 power?

17 MR. CASTRILLI: Yes, it made
18 recommendations, it made extensive recommendations as a
19 matter of fact. But, as you know, the Energy Board in
20 Ontario makes decisions.

21 I would also note that the Alachor Review
22 Board had eight full-time parties represented by
23 counsel; we seem to be down to approximately four or
24 five, and there were a number of other parties who
25 appeared from time to time either represented by

1 counsel or on their own.

2 So that in terms of numbers of people in
3 the room at any one time, the Alachor Review Board was
4 dealing with more people than we are dealing with here.

5 Fourthly, Mr. Freidin raised the issue of
6 credibility and the concern he had with witnesses
7 basically being put on the stand and suddenly being
8 attacked.

9 Well, frankly, that has not been a
10 problem before the Ontario Energy Board where this is
11 now a regular practice, and it has not been the
12 experience in other jurisdictions -- or, excuse me,
13 before other tribunals besides the Energy Board where
14 this is in fact done. It just doesn't become an issue,
15 at least to the extent that my friend seems to think it
16 would.

17 Fifthly, he raised the issue of inequality
18 of treatment and I have already advised the Board that
19 we are certainly prepared to be bound by the Board's
20 rule, as long as it is equally applied to all the major
21 actors, unless there is a good reason that it not be
22 applied to them, which apparently seems to be the
23 position of Mr. Hunter.

24 Sixthly, he raised the issue of the time
25 commitment associated with producing more detailed

1 witness statements. Again, this has been done before
2 other tribunals before and I am not sure why it cannot
3 be done by the Ministry of Natural Resources in this
4 particular case, and I am going to have a suggestion in
5 a moment with respect to how, in fact, it could be
6 done.

7 Seventh, Mr. Freidin has advised the
8 Board that up to now examination-in-chief has only
9 taken a day and a half in comparison to what he
10 describes as a more lengthy cross-examination of
11 witnesses. He didn't, of course, tell you what we may
12 be in store for on Panel 3.

13 My understanding is the
14 examination-in-chief in that panel is going to go up by
15 a factor of four. Perhaps he can confirm that for you.
16 And if that is the case for Panel 3, perhaps he could
17 also advise us what the situation is going to be with
18 Panel 4 in-chief, where the complexity far exceeds the
19 complexity in Panel 3. Maybe we can deal with that
20 when he responds, if he is going to.

21 Now, I believe for the Board's proposal -
22 if you are keeping score, this is point No. 8 - I
23 believe the Board's proposal can work, but I believe we
24 might have to make a little bit of a mid-course
25 correction for that to happen and my suggestion would

1 be, as I understand Mr. Freidin's submission to you, he
2 is about to file Panel No. 6 with us and that other
3 panels are in the course of preparation.

4 It seems to me, my understanding is, that
5 as we are going to be sitting -- or, not sitting in
6 October, that that gives Mr. Freidin some time to make
7 the mid-course corrections in those panels' evidence
8 that has not yet been completed and it might well be
9 appropriate for this tribunal to consider not sitting
10 in November as well, because I believe in the long-run
11 to save two months -- to eliminate two months of the
12 hearing time might save us six months over all, and the
13 Board might well want to consider that as a proposal.

14 So that we would re-commence on December
15 1 after we rise at the end of September.

16 Ninth, I believe if we would proceed in
17 the manner that the Board has proposed and the manner
18 in which I am suggesting in terms of a mid-course
19 correction in these proceedings that there would not be
20 any prejudice to the Ministry of Natural Resources. I
21 believe that two months spent re-writing witness
22 statements that have not yet been written, as it were,
23 can substantially reduce the overall eventual length of
24 the proceedings.

25 Tenth, Mr. Cosman talked about the issue

1 of fairness. I think it is a red herring. We have
2 already indicated we are prepared to be bound by the
3 order, notwithstanding that Mr. Freidin's case has
4 already gone in, partially through full
5 examination-in-chief.

6 I am not sure whether Mr. Cosman was
7 alleging that his client would be prejudiced by not
8 calling a full case after the Ministry of Natural
9 Resources has taken two years to present its, but
10 perhaps he can clarify that.

11 Eleventh, Mr. Cosman indicated that the
12 industry is paying for this hearing out of its own
13 pocket in comparison to those who were being
14 subsidized. My understanding is that appearance before
15 a tribunal like appearance before a court, is something
16 that can be deducted as a business and legal expense
17 under the Income Tax Act so if there is a subsidy there
18 for his client, he should consider using it. I can
19 assure the Board my client cannot do that in the
20 circumstances we are in.

21 Now, Mr. Hunter, who is not here, has
22 asked me to essentially reiterate the concern that he
23 had, particularly at page -- let me get the correct
24 page reference. Page 24, line 17 through 25, and page
25 25, lines 1 to 7.

1 I believe the essence of Mr. Hunter's
2 concern is set out there and, essentially, it continues
3 to be one of being able to integrate these experts'
4 written evidence with that of the evidence of native
5 peoples who, I gather some of who, may well be giving
6 their evidence in other languages.

7 I know he also had referred there to a
8 concern about the additional time element that may be
9 necessary for his expert witness to prepare his
10 evidence, in light of that particular concern, and he
11 just wanted me to advise the Board that that continues
12 to be a concern with respect to his particular problem.

13 THE CHAIRMAN: Did he indicate to you,
14 Mr. Castrilli, an overall position with respect to the
15 Board's proposal, other than the concerns that he
16 raised with respect to his own clients?

17 MR. CASTRILLI: I would have to advise
18 the Board that I cannot say whether he finally came
19 down one way or the other, he had to leave early
20 Tuesday morning. He did want me to restate the concern
21 that he had previously expressed and I have done that.
22 I don't really feel I can go any further than that.

23 THE CHAIRMAN: Very well.

24 MR. CASTRILLI: Those are my submissions.

25 THE CHAIRMAN: Thank you, Mr. Castrilli.

1 Mr. Williams?

2 Could you come up to the lecturn, please,
3 Mr. Williams.

4 MR. WILLIAMS: Mr. Chairman, the
5 procedural issue before us today, of course, is of
6 paramount importance and final disposition of this
7 matter by way of your ruling will have a profound
8 impact on the way this hearing is conducted through the
9 remaining term.

10 But, at the same time, it is going to
11 have a profound impact on a number of the participants
12 as well as to the way in which they conduct their cases
13 and as to the manner in which they may perceptually or
14 realistically be prejudiced by virtue of the change of
15 procedures in mid-stream, if I might say, even though
16 we are far from the midway point, we are part way
17 across the stream and it certainly does give me--

18 THE CHAIRMAN: I think we are still on
19 the bank.

20 MR. WILLIAMS: --great concern that we
21 would be changing horses even at the bank. Even though
22 it is with a genuine effort to try to expedite the
23 proceedings, which certainly is an important
24 consideration, but that consideration must not be
25 resolved and achieved at the expense of even more

1 important considerations which, of course, is that all
2 of the participants participate in a way that -- the
3 manner and way in which they make their presentation is
4 not prejudiced because of procedural restrictions or
5 restraints that may be imposed upon them.

6 It seems to me, Mr. Chairman, that what
7 you are proposing could, based on some of the
8 qualifiers you introduced into your comments on Monday,
9 work to the advantage of some of the disadvantaged
10 participants who do not have the resources, financial
11 or otherwise, to participate to the extent that others
12 might. And I think that this was made obvious in the
13 comments that you made and set out on page 13 of the
14 transcript of Monday, June the 6th.

15 And, if I might, Mr. Chairman, you state
16 at that time:

17 "...I think the Board has to take into
18 account as well the resources of the
19 various parties, because if the evidence
20 is going in and it is going to be
21 constituting their evidence-in-chief,
22 obviously it is going to have to be a
23 fairly detailed and fairly - I won't say
24 complex - ..."

25 Although I don't know why:

1 "...but certainly an inclusive statement
2 of the evidence that that party wants to
3 put before the Board in-chief, and there
4 may be situations where some parties do
5 not have the resources on a full-time
6 basis to be able to produce that kind of
7 witness statement which would then
8 constitute the evidence-in-chief, at
9 least to the same extent as other
10 parties."

11 Certainly I think that's an important
12 recognition that you put forward. If I might just go
13 on a bit further, you fully address that particular
14 problem. You say:

15 "...in addition to that, you are going to
16 get a number of parties who are either
17 unrepresented completely or represented
18 partially; i.e., on a part-time basis -
19 they have counsel, but counsel cannot be
20 here very often and is basically
21 fulfilling the role of a watching brief
22 on the proceedings, in general - and
23 there might have to be some exceptions
24 there."

25 And I took particular note of that

1 because I am fully cognizant, as I think you are, that
2 the Ontario Federation of Anglers & Hunters has been
3 obliged to fall into that category.

4 And so it certainly is apparent that the
5 Board is endeavoring to bend over backwards to
6 accommodate participants in the process, particularly
7 intervenors, recognizing that they do not have the
8 resources that the proponent and the Ministry of the
9 Environment and perhaps one or two others do have
10 available to them.

11 But while that is recognized and
12 appreciated, I have to look at the broader issue before
13 us and try to determine whether, in fact, there is
14 going to be a continuation of complete equity and fair
15 play as far as treatment of all participants is
16 concerned.

17 I am certainly not here to hold a brief
18 for the proponent and I have no antagonism or animosity
19 towards the proponent, I don't mean that. But they
20 have certainly well stated their own position and case
21 but I think the case they have put forward, I think is
22 a meaningful presentation and I think one that has to
23 be carefully considered because the other side of coin
24 to the matters I was dealing with is that: It appears
25 in endeavouring to expedite the proceedings, at the

1 same time, you are in effect introducing a set of
2 double standards; one in which inflexibility is being
3 imposed upon the proponent and perhaps others, while
4 perhaps maintaining a level of flexibility - if not
5 increasing that level of flexibility - with other
6 parties.

7 And given that that would undoubtedly
8 benefit my particular client, I certainly applaud that,
9 but I do see a certain unfairness entering into the
10 issue and I guess it comes down to one of the matters
11 that's been discussed here in the past few days in
12 evidence and that's the issue of weighting. It seems
13 to me that if a party is restricted to providing
14 evidence by way of written testimony - and while those
15 parties could have some assurance that all of that
16 written testimony would be carefully read by members of
17 the Board in its entirety - it still does not bring to
18 the Board the immediacy, or the emphasis to the Board,
19 issues that they want the Board collectively and, at
20 the same time, to understand and appreciate.

21 And I think there is an important
22 difference here to be recognized between each of the
23 Board members in the quiet of your hotel room reading
24 statements of evidence and, applying to that, the
25 importance you see on certain statements, is

1 considerably different from your sitting in panel
2 listening to emphasis being given to all three of you
3 at the same time by a witness in oral testimony as
4 being adduced by counsel.

5 I think that's an important, very
6 important consideration, Mr. Chairman, and the loss of
7 that advantage to a party by having that removed from
8 evidence-in-chief, or at least condensed so that he may
9 or may not -- he or she may or may not have an
10 opportunity to illicit that evidence, although I
11 presume if it is that important to that person they
12 would bring it out within the first two hours very
13 quickly, but it may be that the volume of evidence is
14 such that important material would be missed. And that
15 does, I think, introduce an element of unfairness to
16 the parties.

17 I don't anticipate, with regard to my own
18 client's witness statement, that it will be as complex
19 and as lengthy as some of the other panels or
20 statements that will be brought forward by the
21 proponent later in the proceedings. But I think to
22 suggest that we must endure lengthy and technical
23 statements of evidence as we move into the body of the
24 hearings cannot, surely, be legitimate reason for
25 trying to circumvent that aspect of the hearings when

1 it is so fundamentally important and critical to the
2 process, particularly when we are breaking new ground
3 here, as you said at the very outset.

4 These hearings are really a new plateau
5 for the Board and for the public of this province as to
6 the scope and magnitude of the hearing and just how it
7 touches virtually all of the citizenry of this province
8 and I suppose it is ironical that, based on what
9 research Mr. Freidin's people have done over the past
10 few days, it is ironical that to this point in time
11 there appears to have been such a limited demonstration
12 of public interest based on the visits or lack of
13 visits to the different repositories, but that's
14 another matter that I will spoke to in a moment or two.

15 But, in any event, there is this concern,
16 Mr. Chairman, of preserving flexibility in
17 evidence-in-chief to all parties and the imposing of
18 restrictions as to giving of oral evidence I think is a
19 severe impediment that must not be imposed.

20 Again, too, to have to have a statement
21 of evidence that is to be the absolute statement by
22 that person or that party, again, is an element of
23 inflexibility that certainly the Federation would feel
24 prejudiced by.

25 I suspect that many of the parties

1 participating, the intervenors will be, very late in
2 the proceedings, developing their final submissions
3 based on the evidence that's adduced in the earlier
4 stages of the hearings. We have our basic -- certainly
5 our basic perceptions and views and approaches we are
6 going to be taking, but they too will be modified even
7 up to probably the date by which we have to have our
8 submissions in and --

9 THE CHAIRMAN: Why is that different from
10 any other party's obligation?

11 MR. WILLIAMS: Well, I am saying it
12 isn't, but it is just an added pressure, Mr. Chairman.
13 I am not saying it is different, I am just saying it is
14 an added pressure.

15 And, in any event, I just feel there is a
16 sense - and it is no intention, of course - but there
17 is a sense of straightjacketing that would not prove to
18 be in the best public interest by applying the
19 suggested procedure that's being put forward.

20 As I say, the procedure you are offering
21 has some advantages to parties such as ourselves, but I
22 am trying to look at the broadest picture before us and
23 see whether, in the overall, it is going to be in the
24 best interests of this particular Class EA and of the
25 Board in service to the public of Ontario.

1 THE CHAIRMAN: Have you considered, Mr.
2 Williams, the advantage or value to the public interest
3 of a hearing that may proceed over the course of some
4 two years in terms of the time, cost, expense and
5 volume of documentation and/or evidence that is put
6 before the tribunal?

7 In other words, there is a public
8 interest in the Environmental Assessment process, per
9 se. One of the interests I think that the public does
10 have is that that process is viable and works, and
11 there is a concern expressed out there - and I won't
12 define out there - that this process is becoming mired
13 in proceedings which are so lengthy and so costly that
14 the benefit of subjecting an application to an
15 assessment has to be weighed in that light.

16 I think it is the desire of the Board,
17 certainly I would suggest it is the desire of the
18 government ministries involved, and I would as well
19 suggest it is the desire of the public, that if we are
20 going to have Environmental Assessment methodology, it
21 is viable, but it has to work in a context where it
22 does not lose its efficacy as a result of a hearing
23 process itself.

24 MR. WILLIAMS: I think that's well
25 appreciated and understood, Mr. Chairman, but I think

1 at the same time you'll appreciate that not only the
2 hearing process, but the whole environmental
3 undertaking and the importance of it to our society, is
4 a condition of the undertaking from the very tenance of
5 the Environmental Assessment Act and its structure and
6 its process; all of the time and cost associated with
7 it is a price that the public of this province
8 obviously is prepared to pay because of the end
9 beneficial results, but I know that it puts added
10 strain and stress on you the people who have to do the
11 processing of it.

12 So, again, there is the downsides to it,
13 but I think we all believe in the process and the fact
14 that, notwithstanding the cost - and certainly it is
15 important that we try to find new ways and means of
16 improving the process - and, of course, as you know Mr.
17 Chairman, the Minister announced a few brief weeks ago
18 that a whole new undertaking is to proceed to find ways
19 and means of streamlining the process, and I guess my
20 question to you is: Should this panel, this particular
21 hearing be used as the guinea pig to try to establish
22 some of those new ground rules in the process?

23 THE CHAIRMAN: I would not characterize
24 it in the nature of a guinea pig.

25 MR. WILLIAMS: Maybe I shouldn't use that

1 term, guinea pig but --

2 THE CHAIRMAN: It is a hearing that is
3 ostensibly just commencing.

4 MR. WILLIAMS: Yes, right.

5 THE CHAIRMAN: We have had the first
6 couple of panels that have been an overview or general
7 in nature, as opposed to the more technical panels that
8 are going to follow and if we are going to streamline
9 the process in any way, I would suggest now is the time
10 as opposed to later and much later.

11 MR. WILLIAMS: I must assure you, Mr.
12 Chairman, that I applaud the initiatives that the Board
13 is trying to take to find ways and means of achieving
14 this end result, but if they are so substantive, some
15 of the proposals, they may have to wait to another day
16 and be applied from the outset of other future
17 hearings.

18 THE CHAIRMAN: That's quite right. This
19 is one of the reasons for this discussion this morning.

20 MR. WILLIAMS: Yes.

21 THE CHAIRMAN: To canvass the views of
22 all the parties, and I might just add at this time, the
23 Board has no intention today of making a decision with
24 respect to this issue. We will reserve on it over the
25 weekend until next Wednesday, at which time we will

1 come back with a decision on it. We do want to fully
2 consider all of the arguments and submissions made by
3 everybody.

4 MR. WILLIAMS: I just have a few more
5 comments, if I might, Mr. Chairman.

6 My friend behind me, Mr. Cosman, who I
7 sense was pleading poverty at some point with regard to
8 the ability of his clients to rise to the occasion, did
9 state, as I understood it, that somewhere down the line
10 someone is going to say: We don't have the resources
11 to prepare the in-depth witness statements. From my
12 point of view, Mr. Chairman, we are now down the line
13 and I am making that comment this morning.

14 That's just one of the ways in which my
15 client would be prejudiced.

16 THE CHAIRMAN: Let me put it this way:
17 How would that prejudice be weighed against any
18 prejudice you might perceive in not being able to
19 attend the hearing itself for a much longer period of
20 time if, by not adopting some procedures such as
21 suggested, the hearing in fact does take an extra
22 number of months?

23 MR. WILLIAMS: Well, I think with regard
24 to my client, of course, we already experienced that
25 situation and we are living with that situation. So it

1 is not one that would be new to us because, as you well
2 know, we have had to take that step down and a large
3 part of these hearings will be done on a watching brief
4 basis. We just do not have the resources to be here.

5 So certainly, as I said in our opening
6 statement, in that way we have already experienced a
7 prejudice just through circumstances that have arisen
8 and we are going to have to live with that.

9 So in that respect that is one that we
10 are already experiencing, but this would just be an
11 added one, if we had to prepare in-depth witness
12 statements that I would have to tell my client, this
13 would be their absolute comment on the issue and they
14 would not have full flexibility in the hearings,
15 although I think, from what I said earlier in quoting
16 your comments, probably you would extend to us the
17 advantage of that flexibility because of some of our
18 limitations, but notwithstanding the principle, I think
19 we would feel that to develop the absolute witness
20 statement from the outset would create some
21 difficulties for us.

22 So, Mr. Chairman, these are the concerns
23 that I have, their reiteration and, I suppose, what has
24 been stated by others here -- certainly there are
25 certain comments that Mr. Castrilli has made that I am

1 sympathetic to but, in the overall, I want to see that
2 fairness does prevail throughout the process even if it
3 is at the expense of hearings that are more protracted
4 than any of us had envisioned.

5 I would hope that common sense will
6 prevail, not only amongst the proponents in developing
7 a case within reason in the same way that we, as
8 parties in opposition, will exercise reason in the
9 extent to which I presume we develop our
10 cross-examinations and how far afield we may go,
11 because we know of certainly your fairness and latitude
12 that you extend to us in developing our
13 cross-examination; that we have virtually unlimited
14 opportunities, but I think there is an obligation on us
15 at the same time not to abuse that privilege. So I
16 think there is an onus not only on the proponents, but
17 also on the other parties to the proceedings.

18 The last thing I wanted to comment upon
19 again, Mr. Chairman, was of course the mechanism of
20 circulating the material and the suggestion, with the
21 development of these statements, of circulating them to
22 all the repositories and so forth which, again, comes
23 back to a cost factor which I needn't elaborate upon
24 obviously would be a prejudice to our clients.

25 And while again I think you indicated a

1 recognition of this problem in your comments the other
2 day, we would have to be relying on your sub-subjective
3 assessment as to which of us would be entitled to some
4 means of support from the Board to meet those
5 additional costs, again.

6 We are certainly -- our financial
7 resources are strapped, but that is our problem and not
8 yours, but it is one I think you are sensitive to and
9 which we appreciate. So that would be a problem and we
10 would be, obviously, looking for some kind of
11 meaningful support, if that was to prevail.

12 Mr. Castrilli made some reference to
13 criticism that unlike a formal court proceeding, that
14 these tribunal hearings, there is no subsidy by way of
15 tax writeoffs and so forth. I guess some of us are
16 privileged to get a subsidy from other directions, but
17 I think we suffer doubly from it because we have no
18 subsidies coming from anywhere.

19 But, in any event, these are the concerns
20 that I bring forward, Mr. Chairman. I leave them with
21 you, I hope they are of some assistance to the Board,
22 they are meant to be constructive and, in closing, I
23 certainly do again applaud the Board for its efforts in
24 trying to find ways and means of expediting the process
25 without prejudicing any parties involved in the

1 process.

2 Thank you.

3 THE CHAIRMAN: Thank you, Mr. Williams.

4 Is there anybody else -- before we get
5 around to a response of some of the parties that have
6 already made submissions to previous submissions, is
7 there anybody else that wishes to comment on this
8 proposal at this time.

9 (no response)

10 If not, then the Board proposes to take a
11 break at this time and, upon returning in 20 minutes,
12 we will allow counsel to make a further submission
13 based on some of the things that we have said.

14 We may depart from the normal procedure
15 in the sense that I would like every counsel that
16 previously made a submission to have an opportunity to
17 make a further submission, because it may have changed
18 their position, or may have modified their position
19 because of what they have previously heard.

20 We will return in 20 minutes.

21 Thank you.

22 ---Recess at 10:15 a.m.

23 ---Upon resuming at 10:35 a.m.

24 THE CHAIRMAN: Thank you, ladies and
25 gentlemen. Please be seated.

1 Well, perhaps we could make a round of
2 the parties in perhaps the same order as we commenced
3 this morning.

4 MR. FREIDIN: I would ask that I have the
5 opportunity to --

6 THE CHAIRMAN: Speak last.

7 MR. FREIDIN: --speak last, Mr. Chairman.

8 THE CHAIRMAN: I suspected you probably
9 would, Mr. Freidin, but I thought I would throw it out
10 there anyways.

11 Mr. Cosman, do you want to go first,
12 then?

13 MR. COSMAN: Very brief, Mr. Chairman.

14 Mr. Castrilli, in his submissions, put
15 the question rhetorically perhaps, whether my clients
16 the OFIA would consider themselves prejudiced if this
17 procedure were adopted, given that our client's case
18 follows that of the MNR; and my answer to that very
19 clearly is, yes.

20 We will be calling, as will the other
21 parties be calling, complex economic evidence, complex
22 scientific evidence; that is, evidence that is going to
23 require oral exposition to be truly and fully
24 understood by this Board. Bar graphs and LANDSAT
25 photographs by themselves in a witness statement

1 require explanation.

2 THE CHAIRMAN: Well, before we go on. I
3 hope the parties are understanding that in this
4 proposal we are not suggesting that there is no oral
5 presentation, we are suggesting just a time limit on
6 that oral presentation; and we have indicated that,
7 under the proposal, counsel would be required, I
8 suppose, to focus in upon those aspects of their
9 written evidence that they wish to highlight, expand
10 upon, explain, and ensure that the Board is
11 understanding it in the light that they wish to put on
12 it.

13 Many of the parties that have spoken
14 today have - and I am sure it is not the case - but
15 have presented their, if I might call them, objections
16 to the proposal almost on the basis as if there were
17 going to be no oral presentation, and that all of their
18 evidence was going to be by way of written submission.
19 That is certainly not the case, it is just not an
20 unlimited time allowance for that oral presentation.

21 MR. COSMAN: Certainly I understood that,
22 Mr. Chairman, and my submissions are predicated on
23 that.

24 My point is that certain evidence may
25 take a very short amount of time - and I, as is my

1 style, you will find that I will be brief and will not
2 unduly take the time of the Board - certain evidence,
3 certain other evidence in a case such as this, because
4 of the variety of issues, because of the nature of the
5 evidence will require more time, and I think that the
6 Board should have confidence in counsel's ability to
7 determine what is appropriate in the presentation of
8 that case to the Board.

9 And this is not - and my friend Mr.
10 Castrilli used the example several times of the Ontario
11 Energy Board - this is not an OEB rate case; this is
12 not a case where there is a Board knowledgeable on
13 energy regulation that sits time after time listening
14 to the same stuff; this is a brand new matter for this
15 Board involving matters of complexity outside the
16 particular knowledge of members of the Board, where the
17 Board is going to be making decisions that affect the
18 north in a profound way and, in my view, no arbitrary
19 limit to that presentation of oral evidence should be
20 imposed.

21 In my view, parties should be directed to
22 highlight the evidence, to highlight it in an
23 appropriate way and not to be repetitive or unduly
24 lengthy, and I will live by that, and I am sure other
25 counsel will as well. But certain evidence, as you

1 will see, because of the nature of evidence and because
2 of the variety of issues, can't be done in two or three
3 hours, and so what I am suggesting to you is that for
4 that reason it would be -- you know, the OEB analogy is
5 just fallacious.

6 Now, in addition to that, the second
7 reason is the fact that we are going to be - and you
8 pointed out, Mr. Chairman, that we are on the bank or
9 just off of it - but the fact is, that by the time the
10 procedure changes, which is not today, which is not
11 tomorrow, but which is perhaps after Panel 6, we are
12 going to be well into it; one third of the panels of
13 the MNR will have been heard, one third of the panels
14 of the MNR will have been heard on the basis originally
15 contemplated by this hearing with oral exposition in
16 the normal course, and then the rest of the parties,
17 including myself - and I will only speak for myself -
18 will have, in dealing with the same kind of evidence,
19 two hours. And, in my view, this is giving a
20 procedural advantage to one party over the other
21 parties.

22 I would like to respond briefly to your
23 question with respect to the public interest in a
24 lengthy hearing. And that is a very difficult
25 question, of course, and we cannot put ourselves in the

1 position of the Minister who is looking at the process
2 together with the Board, but the point is, we have --
3 this Board at this time, under the law as it now
4 stands, has before it a very complex undertaking to
5 examine and if it takes two years to examine a matter
6 that affects the environment of the north in its
7 social, economic and natural sense, then that is what
8 it will take.

9 Longer time has been spent on far more
10 limited issues and as much as I will support every
11 initiative to shorten the hearing, I don't think that I
12 could support an initiative which I fear is going to
13 limit the parties in a way to present the Board with
14 evidence on that myriad of issues, in a way that will
15 be elucidating for the Board and for the public who has
16 to follow because if the Board, which is skilled in
17 determining these kinds of matters, has some difficulty
18 with the witness statement by itself, consider the
19 member of the public who reads that witness statement
20 in a depository somewhere with no explanation of it; he
21 sees those bar graphs - and I come back to that only
22 because two hours in some cases won't do it, and at the
23 end of two hours, I don't think the curtain should come
24 down. That is my only submission on that point.

25 And I just want to finish with my friend

1 Mr. Castrilli's - not a very serious point - but his
2 rather unique and interesting understanding of
3 economics. And I just want to say that I can assure
4 him that my clients would prefer to have the money to
5 buy equipment or spend on regeneration than have a tax
6 deduction for lawyers' fees.

7 THE CHAIRMAN: You have been told, Mr.
8 Castrilli.

9 Ms. Seaborn?

10 Thank you, Mr. Cosman.

11 MS. SEABORN: Just one short point of
12 clarification, Mr. Chairman. I won't repeat the
13 comments that have been made by other counsel or by
14 myself earlier, but the suggestion has come up during
15 other peoples' comments about how this would affect the
16 party's case when it came time for the intervenors to
17 call their evidence.

18 And it is our position on that, that any
19 sort of limitation, if the Board chose to go in that
20 direction, that was placed on MNR should also be placed
21 on all the other major parties to the hearing; and that
22 would, of course, include the presentation of the
23 Ministry of Environment's case, and we would, of
24 course, live by those rules so that there would not be
25 seen to be any inequality between the amount of time

1 that witnesses from the Ministry of Natural Resources
2 had to present their case and witnesses from MOE.

3 THE CHAIRMAN: No. I think the Board's
4 feeling in that regard, Ms. Seaborn, was that all of
5 the parties who would be normally calling expert
6 witnesses, other intervenors or in support, would be
7 more or less bound by the same set of rules.

8 The difference, maybe the possible
9 exception, being those parties such as some of Mr.
10 Hunter's clients in some sense that may not be
11 comfortable presenting evidence in other than an oral
12 fashion.

13 When we get to the parties that are
14 unrepresented by counsel, they would normally not be
15 required to file witness statements, in any event, and
16 the same for parties who may be partially represented
17 by counsel.

18 By the same token, they may not be
19 wanting to call expert witnesses in any event, they may
20 be there to cross-examine or make submissions or make
21 some other kind of presentation to the Board, but they
22 would not be in the same category as the major parties
23 who will be calling expert witnesses in the usual
24 sense.

25 Just with regard to the issue of the

1 treatment of all parties equally. I think the parties
2 have to be aware that in the past the Board -- although
3 it strives whenever possible to treat the parties in a
4 fair and equal manner, there are some differences that
5 the Board has recognized in the past, and the example I
6 have just given you is one; witness statements.

7 Not all parties are required, in Board
8 proceedings, to file witness statements and partly that
9 is because not all parties are represented by counsel,
10 not all parties have the expertise to formulate witness
11 statements to the same extent that others parties do,
12 and the Board has always made that kind of
13 differentiation.

14 Secondly, the Board has differentiated
15 between parties in the way they have been treated to
16 some extent in cross-examination; it is not just this
17 Board, it is many Boards. Lay witnesses who are
18 unrepresented by counsel may be treated slightly
19 differently in cross-examination, in that the Board
20 would be adverse to seeing counsel or parties
21 represented by counsel going for the jugular and would
22 be very vigilant in more or less protecting the rights
23 of unrepresented parties or witnesses who are being
24 cross-examined.

25 To some extent there may be a

1 differentiation in the way they are treated as opposed
2 to parties and witnesses, and expert witnesses
3 particularly, who are used to testifying and are used
4 to having their views challenged and treated in an
5 adversarial context.

6 So I think there has to be a recognition
7 that whether this proposal is adopted or is not
8 adopted, that parties throughout this hearing cannot
9 procedurally, in all instances, always be treated the
10 same, although every effort will be made by the Board
11 to treat everybody in a fair and equitable manner.

12 MS. SEABORN: Thank you.

13 THE CHAIRMAN: Mr. Castrilli?

14 MR. CASTRILLI: Mr. Chairman, I think in
15 light of the first round, now that we broke that down
16 in terms of support and non-support for the Board's
17 proposal, I would like to go after --

18 THE CHAIRMAN: Oh, I see. Not go after
19 him, follow him?

20 MR. CASTRILLI: Follow him.

21 THE CHAIRMAN: I thought we would have to
22 restrain you for a moment, but I guess we don't.
23 Misinterpretation by the Board. Very well.

24 Mr. Williams?

25 MR. WILLIAMS: Maybe I should speak from

1 here.

2 THE CHAIRMAN: We will intervene if Mr.
3 Castrilli leaves his seat.

4 MR. WILLIAMS: You are my friend, Mr.
5 Castrilli, if I get the...

6 MR. MARTEL: Was. Was.

7 MR. WILLIAMS: Mr. Chairman. I don't
8 want to be repetitive, I am just going to make two or
9 three brief comments.

10 Firstly, given that this is going to be a
11 landmark decision, it is going to obviously affect all
12 kinds of specific EAs, individual EAs in the future
13 dealing with this particular subject, I think it is
14 particularly important that this be the hearing that
15 sets the guidelines for the future, and I think because
16 of that alone, the introduction of evidence by all
17 parties must be completely unfettered, provided it is
18 within the normal bounds of procedure and practice as
19 we have it today, and I think that must apply
20 particularly to evidence-in-chief, even if we have to
21 go the extra distance - with the Board that is - to
22 hear evidence that it may consider to be moving into
23 the realm of extraneous and unrelated; obviously, you
24 will exercise appropriate discussion there.

25 But I think because of the nature of this

1 hearing and that it is a new dimension of the Board's
2 responsibility and undertaking that in this case, in
3 particular, unfettered introduction of
4 evidence-in-chief otherwise should remain the rule of
5 the day.

6 The Board has already, early in the
7 proceedings, shown initiatives in the ways in which the
8 proceedings might be expedited and they have been
9 referred to by others. I think there will be other
10 initiatives that the Board will probably come on that
11 will permit other shortening of proceedings. Each one
12 of them added together may be much smaller than this
13 very substantive proposal, but they will be helpful to
14 the process and I think at this stage, and in this
15 particular hearing, this particular proposal by the
16 Board with regard to use of canned evidence, I think is
17 too substantive given the circumstances and nature of
18 this hearing.

19 And I think that that suggestion should
20 be for another day and another forum with the greatest
21 of respect, Mr. Chairman.

22 THE CHAIRMAN: Thank you, Mr. Williams.

23 Mr. Castrilli, it is now your turn.

24 MR. CASTRILLI: Thank you, Mr. Chairman.

25 I will be brief. Just three points.

1 Mr. Cosman tells us that this is not an
2 Energy Board rate hearing and that the analogy between
3 the Ontario Energy Board and the Environmental
4 Assessment Board is fallacious.

5 Well, the Alachlor Review Board hearing,
6 as I indicated earlier, was not about rate hearings, it
7 was about cancellation of an herbicide in which we
8 dealt with toxicology, metabolism, macro-economics,
9 hydrogeology, engineering; these are all matters, some
10 of which were within the expertise of that tribunal,
11 some of which were not and I see no reason why we have
12 to be fixated on whether or not this is a rate hearing
13 or not. There are obviously lots of precedents for
14 canned evidence before tribunals that do not deal with
15 rate matters. There is no reason why the Environmental
16 Assessment Board could not deal with this matter and
17 the approach and manner in which the Board has
18 proposed.

19 Secondly, the National Energy Board also
20 uses canned vidence on a regular basis and its hearings
21 are not restricted to rate hearings. As you are aware,
22 the Energy Board at the national level regularly deals
23 with inquiries into the construction of pipelines and
24 related facilities and, in fact, some of the evidence
25 they hear there undoubtedly is some of the evidence we

1 are going to hear in this proceeding in terms of the
2 impacts of construction or earth-moving activity on the
3 environment.

4 There is no reason why we cannot look to
5 the National Energy Board and the Alachlor Review Board
6 as precedence for what the Board is proposing in this
7 case.

8 Secondly, Mr. Cosman has indicated that
9 his client is concerned about the procedural advantage
10 the Ministry of Natural Resources will have by having
11 presented approximately one third of its case through
12 full examination-in-chief and then changing to the
13 approach proposed by the Board, while all other parties
14 would be restricted to the new approach.

15 Well, I just don't understand Mr.
16 Cosman's logic. I thought at beginning of this hearing
17 his client's position was that they supported the
18 Ministry of National Resources case.

19 MR. COSMAN: Don't misstate it. Mr.
20 Chairman, we generally do, but as I have indicated
21 several times, we will be departing from the MNR
22 position and giving evidence and making submissions
23 when and where appropriate.

24 MR. CASTRILLI: Well, I guess that
25 remains to be seen, but I understood his position at

1 the beginning of the hearing was he supported the
2 Ministry's case, that is why he goes first before I do.

3 THE CHAIRMAN: Well, we ascertained at
4 the beginning, Mr. Castrilli, where the parties stood
5 in a general sense realizing that there are a lot of
6 issues and he may not be in sync with all issues. We
7 did that in order to get them on one side of the fence
8 or the other in terms of procedural order.

9 So I think if Mr. Cosman has indicated
10 that he will not be agreeing with the Ministry's
11 position on everything, that he certainly has that
12 right to put that point of view forward.

13 MR. CASTRILLI: Fine. And, finally, on a
14 later note, Mr. Cosman also indicated some concern with
15 my understanding of economics and I would presume,
16 however, that whether or not his clients would prefer
17 to spend their money on forestry equipment than on tax
18 deductions, that his client is not about to forego the
19 tax deduction in this case. My clients don't have the
20 option.

21 Those are my submissions.

22 THE CHAIRMAN: Well, that issue is
23 irrelevant to this hearing, and we will curtail its
24 presentation at this point.

25 Thank you.

1 Anybody else, other than Mr. Freidin?

2 (no response)

3 Very well, Mr. Freidin.

4 MR. FREIDIN: I want to deal with the
5 analogy between this tribunal and other tribunals very
6 briefly.

7 I adopt the submissions that Mr. Cosman
8 made, sort of, on his second round as for why the
9 Ontario Energy Board and other Boards, and how they may
10 operate shouldn't carry the day. And in the case of
11 Alachlor, it was admitted by my friend Mr. Castrilli
12 that that Board did not have a decision-making power.

13 Really you get down to the bottom line:
14 Mr. Chairman, you have got to decide these things on a
15 case-by-case basis and I think there has been
16 sufficient evidence or submissions made to you today to
17 indicate why this is a unique situation for a number of
18 reasons and why, in those circumstances, the decision
19 should be made based on the facts in this case and not
20 what some other Board may do.

21 In relation to a submission by Ms.
22 Seaborn and the comment by Mr. Castrilli as to how long
23 will the panels to come take: As indicated, those
24 panels, some of them, will deal with fairly technical
25 evidence and, in my submission, it is expected that

1 they will take longer. With increasing complexity it
2 will certainly take longer and therefore, in my
3 submission, it is all the more reason that there
4 shouldn't be a limitation.

5 Mr. Castrilli's suggestion that we take
6 off the month of November - sounds just, generally it
7 is a good one - but when it is coupled with the reason
8 for the suggestion, it no longer becomes a good one. I
9 do not know on what evidence Mr. Castrilli can say that
10 a month given to the Ministry of Natural Resources in
11 November is somehow going to save us six months. There
12 is no evidence of that and I submit that that is an
13 unreasonable conclusion to come to.

14 MR. CASTRILLI: Mr. Chairman, just for
15 the record it was two months, October and November.

16 MR. FREIDIN: If I don't take a holiday
17 in October I won't be back.

18 THE CHAIRMAN: Where are we all going,
19 Mr. Freidin?

20 MR. FREIDIN: We are going to try to send
21 you off by yourselves some time in July, and that is
22 all I can say.

23 THE CHAIRMAN: All right.

24 MR. FREIDIN: The last point I would like
25 to address, Mr. Chairman, is your comment about the

1 public interest in the Environmental Assessment
2 process. I echo Mr. Cosman's submissions in that
3 regard.

4 The issue at stake here or the major
5 issue at stake here is the right of the proponents to
6 carry out the undertaking as defined in a certain
7 fashion and if it takes two years, then I agree with
8 Mr. Cosman, that if it properly takes two years, then
9 that is what it will have to take.

10 And, as stated by a judge in British
11 Columbia, 'justice and convenience are not always on
12 speaking terms', in my submission.

13 THE CHAIRMAN: Is that Justice Berger, by
14 any chance?

15 MR. FREIDIN: I don't think it was.

16 And I would submit that procedural
17 unfairness which, in my submission, would arise if the
18 proposed suggestion is implemented, is never in the
19 public interest.

20 Those are my submissions.

21 THE CHAIRMAN: Thank you, Mr. Freidin.
22 Very well, ladies and gentlemen.

23 I think at this time the Board wants to
24 sincerely thank all counsel for giving this proposal
25 your very full, undivided attention and putting forth

1 your views to the Board.

2 We shall carefully review the transcript
3 of the discussion this morning, coupled with the
4 earlier one we had on June the 6th, and come back with
5 our decision with respect to the proposal, hopefully to
6 be presented to you on Wednesday morning next when we
7 reconvene.

8 I think we will end the discussion at
9 this point on this topic and, if we could, we will move
10 to the issue concerning the site visits which I believe
11 is the subject of a written motion which has been filed
12 with the Board and I believe distributed to the other
13 parties.

14 Is that correct?

15 MS. MURPHY: Yes, Mr. Chairman.

16 I promised, Mr. Chairman, that this
17 morning I am going to make efficient use of the Board's
18 time and be flexible.

19 THE CHAIRMAN: Okay.

20 MS. MURPHY: What I have done is I have
21 given to the Board and my friends here a copy of the
22 draft Notice of Motion and attached to that is another
23 document which is called Proposal for Site Visits for
24 the Environmental Assessment Board.

25 THE CHAIRMAN: Do you have one extra copy

1 by any chance?

2 No, I am sorry we have it.

3 MS. MURPHY: I will give one to my friend
4 Mr. Freidin.

5 Today, Mr. Chairman, I am really here only
6 to ask for two very small things. It is my view that
7 the matter that is to be addressed with respect to site
8 visits is fairly complicated and, with that in mind,
9 what I am asking for today is direction from the Board
10 for an appointment for return of this motion and, in
11 addition, directions from the Board as to service of
12 the motion.

13 And I am looking at, in the Board's Rules
14 of Procedure, Rule 23(3) in which, in certain
15 circumstances it advises, and I quote:

16 "Prior to the Notice of Motion being
17 served, an appointment shall first be
18 obtained from the Board for hearing the
19 motion and directions obtained from the
20 Board as to service."

21 And, essentially, that's really all I am
22 asking for today, Mr. Chairman. I am proposing that
23 this motion be made returnable on Friday next, which I
24 believe is the 17th of June, if I am right - I believe
25 it is the 17th of June - I am also suggesting, sir,

1 that the Notice of Motion with certain attachments be
2 served on the parties who receive full-time
3 correspondence so that the matters that are raised here
4 can be canvassed and reviewed at that time.

5 Basically the situation is this: I think
6 we should bear in mind that site visits are, in fact, a
7 form of evidence and flowing from that is that it is
8 necessary, in some way, to meet the concerns that arise
9 due to the basic requirements of natural justice.

10 At the same time, Mr. Chairman, we are
11 concerned about finding an effective method of allowing
12 the Board to view representative samples of areas in a
13 very large area of the province, to look at a number of
14 activities and also to bear in mind that many of
15 activities are seasonal or are conducted in different
16 ways in different seasons.

17 Now, we have given a good deal of thought
18 to the method that we are addressing and proposing here
19 for some attempt to put forward some information and to
20 have some discussions with our friends. There is a
21 good deal of detail in the information that's attached
22 and I would suggest that this is not really possible
23 for anyone to cope - with the detail that's attached
24 here - until they have had an opportunity to review it.

25 In addition, if my friends will note, at

1 the end of the material that's attached, there are
2 phone numbers both for myself and for Mr. Kennedy -
3 Mr. Kennedy is sitting back here at the second table,
4 he's one of the people with the Ministry in assisting
5 in putting this material together - and both of us are
6 available at the phone numbers that are attached for
7 anyone to telephone to ask for further information and
8 details, and to discuss other peoples' concerns about
9 the content of this material.

10 To date, I have had discussions with some
11 counsel and, in fact, with some who aren't here today
12 so that adds to my concern that the appropriate people
13 receive the material, have a chance to review it and
14 discuss it.

15 You will notice then with the Draft Notice
16 of Motion in which we are asking next Friday for a
17 decision from the Board based on those submissions as
18 to a procedure for organizing the visits and for a
19 decision as to the number and identity of the persons
20 to go on the visits, in support of that motion, we
21 would file the material that's called Proposal for Site
22 Visits for the Environmental Assessment Board as
23 attached.

24 Another document which I have referred to
25 in the Notice of Motion which is an example of what I

1 am calling a Travel Guidebook. At present I have one
2 example of something that's similar, it is not entirely
3 on all fours with what I am proposing, but something I
4 think people could review that would help them.

5 My concern is that it is one -- it is
6 about a specific area and given my experience, when I
7 show someone an example of something that's meant to
8 show them form, I end up getting a discussion about
9 substance, but I think it would be helpful for people to
10 see that example.

11 The third thing I would refer to --

12 THE CHAIRMAN: If I could just interpose
13 and ask a question. How would you propose that the
14 guidebook would be devoid of editorial comment in not
15 putting forth any kind of position and retaining strict
16 neutrality, so to speak, so that obviously the sites
17 that you want us to see are not any way slanted towards
18 your side of the case.

19 I think that would be unfair to the other
20 parties in opposition.

21 MS. MURPHY: Yes, Mr. Chairman. I think
22 you will see when you review the material and that the
23 material proposes a procedure for in fact developing
24 this book, that I have attempted to find some ways to
25 allow for people to have input into what would be put

1 in the book, to have an opportunity to review what it
2 says and to, in fact, have the books introduced in
3 evidence in the hearing prior to the visits so that any
4 other concerns that might be raised would be brought to
5 the attention of the Board.

6 I think it would probably be something
7 that would be best canvassed next week after other
8 people have had an opportunity to consider the matter.
9 There isn't going to be, I'm afraid, a perfect
10 solution. I think it is going to be one of those
11 situations where flexibility is going to be required of
12 all of us.

13 THE CHAIRMAN: One further question. I
14 notice that is there a sheet concerning costs--

15 MS. MURPHY: Yes.

16 THE CHAIRMAN: --in this material, and at
17 the bottom in the left-hand box you have summary of MNR
18 costs.

19 MS. MURPHY: Yes.

20 THE CHAIRMAN: Does the proposal include
21 the Ministry picking up the tab for the site visits, or
22 were you intending to charge participants who were
23 selected or agreed to go, along certain fees?

24 MS. MURPHY: In the material that's
25 attached, it was intended to provide information to all

1 of the parties for our discussion over the next week or
2 so, so that they could understand how the financial end
3 of this was developed.

4 At the present time our proposal would
5 be - and, of course, all of this, Mr. Chairman, depends
6 very much on how the travel arrangements are made and
7 who is going along. At the present, as you will be
8 able to see by looking at page 6, it would be our
9 proposal persons who attend the visit would assume
10 their own cost of travel - in this case, to Dryden -
11 and of accommodation and of meals in Dryden.

12 That's the first top of the box and it
13 gives you some idea of what we estimate that would be
14 for different numbers of people and then it advises in
15 the second half what the Ministry costs would be of
16 conducting the visit itself. And there is one piece of
17 information missing, which we don't yet have, which is
18 a cost for a large vehicle, and we will be advising
19 people of that as soon as we have it.

20 The other costs there would be absorbed
21 by the Ministry, in our submission at this time, and
22 this is there to give you some general idea of what
23 those would be, and the detail of that information is
24 available to people if they want to discuss that with
25 us.

1 THE CHAIRMAN: Very well.

2 MS. MURPHY: I just wanted to raise one
3 other piece of documentation, which at some stage, will
4 be very important to people in attempting to review
5 this proposal.

6 We are attempting to prepare for people's
7 review maps of the areas that we are proposing for the
8 first visit. As you will appreciate, as we go along,
9 one of things that's difficult is that where we are
10 trying to suggest to you, in this case, a visit on the
11 week of July 18th, that's our proposal at this time and
12 I would expect we would have to deal with that in more
13 detail next Friday.

14 In order to allow people to have input
15 into what activities may be seen on that week, we have
16 to get information from the districts about what
17 activity are anticipated to occur in that week. And
18 you will appreciate right now that there is a major
19 forest fire problem and a lot of activities are shut
20 down. That being the situation, they do have to
21 forecast. What we are attempting to do is to put
22 together documentation that people can look at that
23 will allow them to see, at this stage, what is forecast
24 to be -- what activities are forecast to be taking
25 place at that time.

1 Right now, I have a couple of maps that I
2 think we are going try and get them into the reading
3 room today. We are hoping to have something more
4 detailed prepared as soon as possible. However,
5 because they are done in the way they are done and at
6 the present it's hand-coloured, it is a little
7 difficult to reproduce and I am trying to do something
8 about that. I just advise you that as soon as I can do
9 something about that, I will.

10 In any event just to close, basically all
11 I'm asking for today then is an order that this Motion
12 be returnable Friday, June 17th and I think that gives
13 time for us to discuss some of these matters with our
14 colleagues and for them to look at the material.

15 I am also asking that for an order that
16 the Notice of Motion be served on all persons receiving
17 full-time correspondence. And, as you will see from
18 the Notice of Motion then, what we will be asking on
19 return of the Motion, is an order that the procedure
20 proposed be followed by the Ministry and that there be
21 a decision as to the number and identity of persons who
22 would go on the site visits.

23 Those are my submissions.

24 THE CHAIRMAN: Are you going to attempt
25 prior to the thing being argued next Friday to obtain

1 some agreement from the other parties as to both the
2 number and who should be attending?

3 MS. MURPHY: We will certainly attempt to
4 do that. As I say, I have left -- I put a phone number
5 on the material. I think people will want to review
6 the material that's here in some detail and discuss it
7 and they are certainly available to do that and, as I
8 say, I have had some discussion with Mr. Hunter's
9 client about these matters in the last while, and a few
10 other people, but we will always certainly be available
11 to do that, sir.

12 And, Mr. Chairman, in addition I don't
13 know if this is really a problem but it might be
14 something that I should mention. The Rules provide
15 that Motion of Motion be given two days' in advance of
16 return of the motion. I expect if I could get the
17 material by courier rather than by normal service out
18 to people in the next couple of days that I wouldn't
19 have a problem with the time for service, although that
20 would mean, again, not following the requirements for
21 service in the legislation which would give us seven
22 days.

23 I would have to count -- so that seven
24 days from today wouldn't give two days' notice and
25 legislation, as I recall and I've been using it,

1 requires if I am using mailing service, seven full
2 days; however, if I use a courier...

3 THE CHAIRMAN: We also have the ability
4 in the Rules in circumstance to abridge the time
5 element.

6 MS. MURPHY: True.

7 THE CHAIRMAN: And I think this would
8 probably be an appropriate place to do that. So if you
9 were to serve the Notice of Motion or undertake to
10 serve it forthwith, then I think it can be made
11 returnable next Friday on the 17th, whether or not it
12 complies strictly with the Rules.

13 MS. MURPHY: My concern is if I leave it
14 any later then we lose another week.

15 THE CHAIRMAN: Now, I am just
16 wondering -- Court Reporter, when would the transcripts
17 of these proceedings be in the depositories, of today's
18 proceedings?

19 ---Discussion off the record

20 THE CHAIRMAN: When would they normally
21 be on deposit?

22 MS. MURPHY: They are supplied to us,
23 sir, and we provide them to the depositories, so...

24 THE CHAIRMAN: So they would not be there
25 by Friday, particularly, of next week?

1 MS. MURPHY: Of next week?

2 THE CHAIRMAN: Of next week.

3 MS. MURPHY: Oh, yes, certainly.

4 Wednesday, Thursday, Friday -- if we receive them on
5 Wednesday I don't know that they'll all get there,
6 but...

7 THE CHAIRMAN: I am not sure that it
8 would make much difference.

9 What I was going to suggest is have the
10 Court Reporter put it into a transcript this Notice of
11 Motion so that it then appeared in the transcript at
12 the various depositories which would sort of give a
13 wider circulation than to just the full-time parties
14 receiving correspondence.

15 MS. MURPHY: Might I suggest that we
16 simply send a Notice of Motion directly to the
17 depositories.

18 THE CHAIRMAN: All right. That will even
19 be easier and you can get that there much easier.

20 All right. I think that the Board is
21 prepared to set next Friday the 17th day of June as the
22 return date for this Notice of Motion. We might as
23 well commence the day's proceeding with this matter.
24 So we will set it for 8:30 a.m. for that week and the
25 service of this Notice of Motion shall take place with

1 distribution to all of the parties receiving full-time
2 correspondence, in addition, the Ministry of Natural
3 Resources will provide a copy, as quickly as possible,
4 to all of the depositories that are presently now
5 receiving transcripts of evidence from this proceeding,
6 and we will deal with the matters set out in the Notice
7 of Motion on that date.

8 MS. MURPHY: Thank you, sir.

9 THE CHAIRMAN: Thank you.

10 Ms. Seaborn?

11 MS. SEABORN: Mr. Chairman, I would just
12 like to advise the Board that one of the concerns that
13 we have had to date with respect to site visits is that
14 we haven't had the generic discussion of what a site
15 visit is all about.

16 I am not suggesting that we spend days
17 and days debating that. I would like to put the Board
18 on notice that while there is a specific Notice of
19 Motion and proposal that will be before us next Friday,
20 my instructions and comments may be beyond what's
21 specifically in the Notice of Motion.

22 As I recall during the preliminary
23 hearings, we did not get into the procedures behind the
24 site visits because, at that time, I believe you
25 indicated that when the issue of site visits came up

1 and it was closer to the time, parties would then have
2 an opportunity to make suggestions as to how a site
3 visit should generically be handled and we may have
4 some brief submissions in that regard before we even
5 get in to looking at a specific proposal.

6 THE CHAIRMAN: Well, I think in view of
7 the time constraints posed by this particular proposal,
8 we should have those submissions by yourself and any
9 other party at the same time. In other words, there is
10 not much sense in going through the details of this
11 particular site visit with the parties when the Board
12 are not ad idem on what the site visit should
13 constitute and what part it should play in the process.

14 So I would suggest that all parties be
15 prepared to comment on site visits generically, while
16 at the same time, deal with this. I might add that it
17 has been the Board's practices - many of you who have
18 appeared before the Board - of conducting site visits.
19 Not all Boards do that; our Board, the Environmental
20 Assessment Board does, finds them helpful and makes a
21 practice of, at some point during hearings, to take a
22 site visit.

23 In the case of this particular
24 undertaking, we have determined up front that it would
25 probably be appropriate - and I see that that is also

1 mentioned in here - that there should probably be site
2 visits, a series of them, so that we could have the
3 advantage of seeing the various facilities and
4 activities in different seasons of the year, because I
5 think the seasonal aspect of what is before us affects
6 what we are seeing and affects the activities and
7 different things occur in different seasons.

8 So if your comments next week are going
9 to be geared towards the Board should not be taking
10 site visits, we can perhaps shorten that at this point
11 by indicating to you that we will be taking site
12 visits, it is a matter of how and when and where.

13 MS. SEABORN: No, I can assure that
14 that's not the nature -- that will not be the nature of
15 our comments; quite the contrary with respect to site
16 visits.

17 I just did want to make it clear before
18 the Board that all of a sudden for the first time we
19 are dealing with the specific proposal that none of the
20 parties have seen before this morning, and my
21 instructions to date are somewhat different than what
22 is contained in the proposal, and it may be that we
23 will have to make some general comments on how we see
24 site visits working over the course of hearing,
25 including the time spend in the satellite locations.

1 THE CHAIRMAN: Very well.

2 MS. MURPHY: Mr. Chairman, precisely what
3 I hope will happen is that my friend will use my
4 telephone number and come over and visit me and we can
5 discuss whatever concerns there are and perhaps
6 accommodate them.

7 THE CHAIRMAN: Well again, the Board will
8 not restrict any comments on the question in any way,
9 but if the parties could get together beforehand,
10 either by telephone or in person, and try and sort out
11 some of the areas that might be in dispute with the
12 question of site visits, it would be useful next
13 Friday.

14 MS. SEABORN: We will certainly make that
15 attempt.

16 THE CHAIRMAN: Is there anything else
17 with respect to that particular issue?

18 Mr. Williams?

19 MR. WILLIAMS: Mr. Chairman, this doesn't
20 deal with the merits of the particular proposal in the
21 motion, it is just with regard to a matter of timing
22 and procedure.

23 But given that next week is a short work
24 week of only three days, I had been canvassing counsel
25 to determine the time when I might be able to do

1 cross-examination during the course of next week, given
2 that I will be unavailable for attendance in Thunder
3 Bay on the week of the 27th, which is the next week
4 following the hearings of next week, with it being one
5 week downtime.

6 In talking to Mr. Castrilli he indicated
7 he would be perhaps two days. On that basis I had, in
8 my own mind, reserved myself next Friday, but given
9 what is transpiring here this morning, I gather to deal
10 with that procedural matter, the motion will probably
11 take up as much time as the procedural matter this
12 morning has, so we can discount next Friday, which
13 leaves me with somewhat of a dilemma on my hands
14 because, short of sitting evenings next week, I don't
15 see that I would be reached, allowing Mr. Castrilli the
16 time he has indicated.

17 THE CHAIRMAN: Well, if you were not
18 reached, Mr. Williams, next Friday, then you would be
19 prepared to come back I guess on the 27th?

20 MR. WILLIAMS: Well, as I say, I am not
21 available the week of 27th.

22 THE CHAIRMAN: Your not available.

23 MR. WILLIAMS: And so that leaves me in a
24 very difficult situation. In other words, I just won't
25 have an opportunity to deal with this panel in

1 cross-examination, if I can't do it next week.

2 THE CHAIRMAN: Mr. Castrilli, would it be
3 a problem if Mr. Williams proceeded next week?

4 MR. CASTRILLI: Commencing on Wednesday,
5 as opposed to my continuing on Wednesday?

6 No, I would be content with that.

7 THE CHAIRMAN: I do not like to split
8 your cross-examination and I certainly would not insist
9 on it being split in any way.

10 MR. CASTRILLI: What I would like do to
11 today is, perhaps we could find a convenient place
12 within my cross-examination to stop and then I am
13 content to let Mr. Williams go.

14 THE CHAIRMAN: And how long would you be,
15 Mr. Williams?

16 MR. WILLIAMS: As I indicated yesterday,
17 Mr. Chairman, after least half a day, certainly no more
18 than a day.

19 THE CHAIRMAN: Then you would be able to
20 get in at least all of Thursday and if you came close
21 to being finished, we might consider sitting later on
22 Thursday.

23 MR. CASTRILLI: That would be fine, Mr.
24 Chairman.

25 MR. FREIDIN: Don't forget Wednesday is a

1 half day.

2 MR. WILLIAMS: Yes, that's right.

3 THE CHAIRMAN: Well, it is, but we will
4 hopefully sit a little later on Wednesday as well.

5 MR. CASTRILLI: I have no objection to
6 that, Mr. Chairman.

7 THE CHAIRMAN: All right. That would
8 accommodate you then, Mr. Williams, and you could get
9 your cross-examination out of the road next Wednesday
10 when we commence; that would be at one o'clock.

11 MR. WILLIAMS: Yes, Mr. Chairman. That
12 accommodation is appreciated, Mr. Castrilli and Mr.
13 Chairman.

14 Now, as I had indicated it would be a
15 minimum of a half day, maximum of a day. Given as Mr.
16 Freidin has drawn to our attention that it is a
17 half-day sitting, if we didn't sit that evening, it
18 could go over into the next morning and I don't want to
19 create further difficulties in that regard.

20 THE CHAIRMAN: Well, we will try and
21 start at one and sit -- we probably will not get to
22 your actual cross-examination until about 1:30 because
23 I suspect we will want to deal with the matter that we
24 addressed this morning.

25 MR. WILLIAMS: That is another concern,

1 yes.

2 THE CHAIRMAN: Which is another half hour
3 or so, but we should be able to get to it shortly
4 after that and we will go from, say, 1:30 through to
5 what it takes, Mr. Williams, to try and finish you off
6 on Wednesday.

7 MR. WILLIAMS: In the appropriate sense.

8 THE CHAIRMAN: In the appropriate sense.
9 Allow you to finish your cross-examination.

10 MR. WILLIAMS: Thank you, Mr. Chairman, I
11 appreciate the accommodation on that.

12 THE CHAIRMAN: Thank you, Mr. Castrilli.
13 Is there anything else at this time?

14 (No response)

15 Ladies and gentlemen, I think at this time
16 we might consider breaking for a short lunch, for about
17 three quarters of an hour, coming back and then
18 proceeding on until no later than 2:15 or 2:30 and then
19 everyone can leave to depart.

20 I believe if we broke, say, no later than
21 2:15 all of us would have time to catch the various
22 flights out early in the afternoon.

23 MR. CASTRILLI: Mr. Chairman, I think
24 that would be all right. I would probably like to stop
25 as close to two as possible because I have to my house

1 and pick up some additional documents.

2 THE CHAIRMAN: All right. If I can ask
3 the parties to return here as soon as possible around
4 12:15. Most of us will just have to eat in the hotel,
5 or right across the road, or something like that, to
6 try and get this thing under way.

7 ---Discussion off the record

8 THE CHAIRMAN: Very well. We will rise
9 right now until 12:15.

10 Thank you.

11 ---Luncheon recess at 11:30 a.m.

12 ---Upon resuming at 12:35 p.m.

13 THE CHAIRMAN: Thank you, ladies and
14 gentlemen. Mr. Williams?

15 MR. WILLIAMS: Mr. Chairman, just before
16 Mr. Castrilli starts, there was just one other
17 procedural point that I thought you were going to deal
18 with today that you mentioned yesterday in regard to
19 the --

20 THE CHAIRMAN: Come on up to the lecturn.
21 Sorry, Mr. Castrilli, we will try and get to you in a
22 moment.

23 MR. WILLIAMS: Mr. Chairman, just before
24 Mr. Castrilli starts, you mentioned yesterday one other
25 procedural point that I thought you were going to deal

1 with today, that was the scheduling notice for the
2 following July onward...

3 THE CHAIRMAN: No, I think I had
4 indicated that we would consider it over the weekend
5 and come back to you on Wednesday with the schedule for
6 August.

7 MR. WILLIAMS: Well, that is fine. I
8 thought you said you were going to deal with it today.

9 THE CHAIRMAN: Well, we have not had an
10 opportunity to check with our offices and see what else
11 is on the agenda.

12 Mr. Castrilli?

13 MR. CASTRILLI: Thank you, Mr. Chairman.
14 Mr. Armson, are you strapped in?

15 KENNETH A. ARMSON, Resumed

16 MR. CASTRILLI: Mr. Freidin, perhaps you
17 can help Mr. Armson.

18 THE WITNESS: Oh, it is broken on one
19 side.

20 MR. CASTRILLI: There is another
21 microphone on the table.

22 THE CHAIRMAN: We will get to you
23 eventually, Mr. Castrilli.

24 MR. FREIDIN: Let the record show that
25 every time...

1 MR. MARTEL: There is a train coming.

2 THE WITNESS: I may have to readjust the
3 knot, Mr. Chairman.

4 THE WITNESS: Is that satisfactory?

5 CONTINUED CROSS-EXAMINATION BY MR. CASTRILLI:

6 Q. Mr. Armson, when we broke off
7 yesterday afternoon I believe we were at paragraph 5(e)
8 of your evidence, page 22.

9 A. Yes.

10 Q. You were speaking there of -- again,
11 this is under the general category of matters or
12 concepts of major importance, the ability to engage in
13 effective management planning and what it requires.

14 And you indicate it requires, among other
15 things, the ability to define land areas and to engage
16 in a description in inventory. I am just wondering,
17 does the Ministry of Natural Resources consider the
18 definition or classification of the land area by the
19 Forest Resource Inventory sufficient to engage in
20 effective management planning for the forest and other
21 uses?

22 A. It is not the only information which
23 is used as a basis for timber management planning.

24 Q. Well, have you not noted in the past
25 the need for a land inventory for management units

1 utilizing the allowable cut with access and secondary
2 uses of the land?

3 A. If I can -- with your question, a
4 need for a -- would you mind repeating it and then I
5 will have it - there are several elements to that
6 question.

7 Q. Surely, surely. Have you not, in the
8 past, noted a need for a land inventory for management
9 units utilizing the allowable cut with access and
10 secondary uses of the lands?

11 A. There seemed to be some elements --
12 the land inventory, in terms of utilizing the allowable
13 cut, the allowable cut, or if we refer to it as the
14 maximum allowable depletion, is based on the existing
15 growing stock at the time; that is, the forest growing
16 stock as I illustrated in general terms to the Board.

17 The inventory of the land is another
18 element and it is an important one, but in terms of the
19 actual determination of the allowable cut or the
20 maximum allowable depletion, it in itself doesn't enter
21 into, if you like, the calculation.

22 Q. Well, didn't you regard such an
23 inventory as necessary for silviculture and secondary
24 uses?

25 A. It is very useful and, in fact, in

1 certain instances quite important information in
2 making -- in the carrying out of silvicultural
3 practices and particularly it normally enters into the
4 development of silvicultural prescriptions.

5 Q. Page 170 of your evidence.

6 A. Yes, I have page 170.

7 Q. You note there in the first full
8 paragraph on that page -- do you have it?

9 A. Yes, I do.

10 Q. The need for and the nature of a land
11 inventory - I am just paraphrasing here - is greatest
12 in the larger forest management units where major all
13 weather access roads exist and the drain on the forest
14 approximates the annual allowable cut, which I now
15 understand is called the MAD; is that correct?

16 A. That's correct.

17 Q. And you go on to say:

18 "If secondary forest uses are also
19 present..."

20 I am leaving out a bit:

21 "...then the need for a land inventory is
22 even greater."

23 A. That's correct.

24 Q. Didn't you regard the FRI as
25 deficient in this regard?

1 A. I would suggest in answering that
2 that the forest resources inventory is not a land
3 inventory, it is an inventory of the forest.

4 Q. That is right. And didn't you regard
5 it deficient in that regard?

6 A. No, I distinguished between an
7 inventory of the land and, if I might, in the sentence
8 proceeding the quotations which -- or to paraphrase to
9 the statements, I said:

10 "The need for and nature of a land
11 inventory is not, therefore, uniform
12 throughout the productive forest land of
13 Ontario."

14 I did not confuse a forest inventory with
15 a land inventory.

16 Q. Page 171 of your evidence, your
17 recommendation at 6.1: The division of forests should
18 identify those management units where, as a result of
19 access, the near to actual utilization of the annual
20 allowable cut and intensity of secondary uses, there is
21 a need for a land inventory.

22 Wasn't that your recommendation in 1976?

23 A. That is correct.

24 Q. Did the Ministry of Natural Resources
25 ever produce such a land inventory?

1 A. Of all the units, no. They have
2 undertaken - and I myself was involved in a soil survey
3 of one of their units where there was very intensive
4 silviculture activity, and during the past few years
5 and continuing currently, various surveys of the
6 land -- of different types have been and are being
7 conducted in relation to this.

8 Q. Can you advise the Board exactly how
9 the Ministry of Natural Resources, or if the Ministry
10 of Natural Resources responded to your recommendation
11 6.1 other than the one management unit you have just
12 referred to?

13 A. Yes, the northeastern region engaged
14 in the middle, and particularly the late 1970s, in a
15 major land inventory of the entire northeastern region.

16 Q. Sorry, were you through with your
17 answer?

18 A. You asked me for an example and I
19 gave you one.

20 Q. Is that in the form of a report?

21 A. There are a series of maps, I can't
22 identify it as a -- the information, the maps and the
23 related data base were developed over a series of years
24 by the northeastern regional staff. I am aware and
25 have seen the maps and so on, but they are used as a

1 working base in that region.

2 Q. There are five areas -- or, excuse
3 me, there are five regions of Ministry of Natural
4 Resources that are within the ambit of the area of the
5 undertaking. Are there such inventories for the other
6 four?

7 A. Work has proceeded and, indeed in the
8 northern region, there is compilation both in map form
9 and in a document by management unit for the entire
10 region of the areas based on all available land
11 inventory information and that would come from both
12 surficial geology maps and also from specific soil
13 surveys undertaken by various agencies and, indeed
14 individuals in some instances. And that has been
15 compiled into an overall catalogue, I guess would be
16 the best way, as well as the map form of land classes
17 which have been put together in a generalized form.

18 The basic information has been aggregated
19 for the management unit level and it is my
20 understanding it was aggregated into what were
21 determined as three basic classes of land in terms of
22 general productivity: the one being the most
23 productivity, the second being intermediate, and the
24 third. And that is available for the northern region.

25 If I may proceed, Mr. Castrilli?

1 Q. Yes.

2 A. For a specific area in the northern
3 region, commencing I believe in 1980 - but I cannot be
4 sure about that date - an intensive study to produce
5 what is termed a forest ecosystem classification which
6 embodied elements of both the soil and the vegetation.

7 This project was carried out and, as a
8 result, a document in the format readily usable by
9 management unit foresters and, indeed, prepared for
10 management unit foresters in both industry and the
11 Ministry has been available for some time and is used
12 in the formulation of silvicultural prescriptions.

13 That classification system is not in
14 itself associated with a formal array of maps. What it
15 does is identify a series of what I believe are called
16 14 operating groups, or 14 operating types of soils, of
17 conditions of soils, combination of soil and
18 vegetation.

19 A similar type of project I believe is --
20 one part of it is neared completion or is essentially
21 completed in this region, northcentral region, and a
22 similar study has been on-going in northwestern region.
23 Again, these were the development of so-called
24 categories of soils and vegetation which can be very
25 useful -- in fact, are extremely useful in the

1 formulation of silvicultural prescriptions.

2 Those are the four northern regions and
3 the various types of endeavors that have been taken in
4 relation to land and associated features.

5 In the southern Ontario --

6 Q. Perhaps -- I was just interested in
7 the area of the undertaking.

8 A. Then I would like to include
9 Algonquin Region, if I might, Mr. Chairman. I
10 believe --

11 Q. That is within the area of the
12 undertaking?

13 A. Yes. In that area there is a
14 considerable amount of surficial geological information
15 available, but because of the variation in soils and
16 because of the expressed needs by, particularly, the
17 Ministry staff, for several years a soil scientist
18 specializing in soils carried out, I guess what might
19 best be described as workshops and also a series of
20 studies in conjunction with the Ministry's forestry
21 staff in that region to give them a much better
22 understanding of the relationship between trees and
23 tree growth and the soil conditions.

24 It does not -- there are soil maps
25 available of various types in that region, but to my

1 knowledge were not prepared specifically for forestry
2 purposes, but the individual who carried out that work
3 under contract for a series of years, in fact, was
4 using the interpretation of existing information and
5 transferring that information and understanding to our
6 field staff.

7 Q. So your testimony is the Ministry,
8 since the date of the publication of your 1976 Report,
9 has substantially met recommendation No. 6.1?

10 A. It has undertaken many activities
11 which may not strictly have undertaken to fulfill the
12 recommendation in its narrowest sense, but have
13 addressed the whole matter of land, the important
14 knowledge that can be obtained relating to that land or
15 soil base to silvicultural decision-making.

16 Q. Are these maps and various reports
17 generally available from the Ministry, or how would
18 one -- or, perhaps you can simply identify if you know
19 the names of them.

20 A. Well, the maps for the northeastern
21 region I imagine, Mr. Chairman, could be obtained from
22 the northeastern region.

23 I can certainly undertake to find out
24 what maps are generally readily available. As I think,
25 Mr. Castrilli, you would understand, that we don't

1 have -- when these maps are working documents within a
2 region, they are not normally put out in a kind of a
3 large number, but I can certainly endeavor to have
4 that -- whatever information is available.

5 I can also -- I believe the map showing
6 the comprehensive array of different kinds of land for
7 the northern region could be made available, certainly
8 the catalogue which identifies management units, the
9 areas of the unit, and the areas of the different
10 classes of land, the three classes, that is available,
11 in fact, I have a copy in my office in Toronto and I
12 would gladly - that is the only one I have, but it
13 would be reproduced.

14 The documents on the forest ecosystem
15 classification for the clay belt in the northern
16 region, that has been produced in published form and is
17 readily available. We can have copies of that for you.

18 Q. So your undertaking to identify for
19 us either the names of them or make them available?

20 MR. FREIDIN: What do you want?

21 MR. CASTRILLI: Well, I just want him to
22 identify them by name and indicate where they are
23 available from. I am not asking him to actually
24 produce them. He has undertaken to do that.

25 THE WITNESS: Well, I could -- those are

1 ones I immediately can, again you know, identify and
2 say I know those are available. There may be other
3 documents, for example, other soil surveys that I am
4 not immediately knowledgeable about, but have been used
5 in this matter.

6 MR. CASTRILLI: Q. All right. And just
7 so that I understand your testimony, these various maps
8 and reports that you have referred to, identify those
9 management units where there is a need for land
10 inventory or, in fact, are the land inventory at the
11 management unit level; is that correct?

12 A. No. For the northeastern region the
13 entire region -- the survey comprised the entire
14 region. For the northern region that is true, but it
15 was based on a series of different kinds of maps that
16 were available.

17 In other words, independent surveys were
18 not taken in that region because of the rather large
19 number of different surveys, some geological, as I
20 mentioned, and some soil surveys for specific areas,
21 sometimes specific management units. Those were
22 combined and collated, if you like.

23 THE CHAIRMAN: I think, Mr. Armson, we
24 are more or less repeating some of the things you have
25 already indicated.

1 You have undertaken to provide Mr.
2 Castrilli with information concerning the names of
3 these maps and whether or not they might be readily
4 available and, at this point, your not undertaking to
5 produce the maps, just to give him the names and an
6 indication of whether or not they are available. Is
7 that correct, Mr. Castrilli?

8 MR. CASTRILLI: Yes, that's correct.

9 MR. FREIDIN: This sort of information we
10 could have provided to him in the form of an
11 interrogatory.

12 MR. CASTRILLI: Well, it has only taken
13 two minutes to discuss.

14 THE CHAIRMAN: Well, Mr. Armson
15 volunteered to provide that information, Mr. Freidin,
16 so...

17 MR. FREIDIN: I am not objecting. I
18 apologize and it can be looked upon as unneeded
19 extraneous comments.

20 THE CHAIRMAN: Very well.

21 MR. CASTRILLI: Thank you.

22 Q. Mr. Armson, perhaps we can move on.
23 Would you agree that a soils classification to separate
24 out agricultural and forested areas as well as provide
25 data on fish, wildlife and tourist operations would be

1 helpful?

2 A. The agricultural soils that we have
3 in this province almost, without exception, were
4 originally forest soils, so the distinction between
5 agricultural soils is one related to what society has
6 done to certain soils, rather than as a generic
7 differentiation.

8 So, in that sense, I wouldn't make a
9 distinction except that the soils which were originally
10 forested which have been cleared and cultivated and
11 various things have happened, have certain
12 characteristics as a result of man's activities on
13 those soils, but still, to a certain degree, retain
14 certain of the characteristics of the forest soil.

15 With respect to the relationship, if you
16 will, or the possible relationships between -- and here
17 the fishery and wildlife, there are some general
18 relationships that we are, I think, generally aware of
19 such as calcareous soils are -- or in the area of
20 calcareous soils, certain types of fisheries are likely
21 to be -- in my general understanding, to occur in
22 certain species as compared with areas of acidic soils
23 such as are characteristic of a good part of the area
24 of the undertaking.

25 To that degree -- and I am speaking

1 specifically here of the fisheries - there are these
2 general relationships. I am not knowledgeable about
3 the effect of soil properties that are some distance
4 from the watershed or the water bodies.

5 In terms of wildlife, I am not a wildlife
6 biologist, but I am well aware that on different soils
7 different types of vegetation flourish and the vigor of
8 that vegetation may vary. And, presumably, therefore
9 in terms of both providing habitat and a source of food
10 for different wildlife organisms there would be some
11 relationship.

12 Q. My question was: Would it be helpful
13 to have that information?

14 A. To a wildlife biologist, I would you
15 expect it could be.

16 Q. Do you recall whether this was a
17 recommendation of Commissioner Kennedy?

18 A. I would have to refresh my knowledge
19 of the 1947 Commission.

20 Q. Mr. Armson, I am showing you excerpts
21 from the Kennedy Commission Report. (Handed)

22 A. Thank you.

23 Q. I trust your familiar with the
24 document?

25 A. Yes, I am. And I am sorry, I don't

1 have it here at this moment.

2 Q. No, I haven't reproduced all of it.

3 MR. CASTRILLI: Mr. Chairman, I would
4 like to make this the next exhibit.

5 THE CHAIRMAN: I believe that is 62,
6 Exhibit 62.

7 ---EXHIBIT NO. 62: Report of the Ontario Royal
8 Commission on Forestry, 1947.

9 MR. CASTRILLI: Thank you, Mr. Chairman.

10 Q. Mr. Armson, if I could direct your
11 attention to pages 170 and 171 of Exhibit 62.

12 Do you have the pages?

13 A. Yes, I do.

14 Q. You can see there that the
15 Commissioner was recommending province-wide
16 classification of forest soils and he divides it into
17 five categories, and over onto page 171 he notes that:

18 "Combined with and superimposed upon the
19 above classification should be data
20 concerning the possibilities of the
21 development of fish and wildlife or
22 tourist enterprises."

23 Do you see that there?

24 A. Yes, I do.

25 Q. Did the Ministry ever produce such

1 data or soils classifications as recommended by
2 Commissioner Kennedy?

3 A. I am not aware of that. The Ontario
4 Land Inventory during the 1950s and 60s produced a
5 series of maps for large areas in the province of soil
6 conditions. I believe the scale of the maps was - and
7 again I am not an absolutely sure - it was something of
8 the order of 1 to 150- or 1 to 200,000, something of
9 that order. And so there are broad areas of the
10 province covered by the soils information by the
11 Ontario Land Inventory at that scale.

12 In terms of the recommendations of Major
13 General Kennedy to which you are referring, Mr.
14 Castrilli, that is the segregation, if you like, of
15 soils into those which will never be suitable under
16 present standards and so on, I am not aware of that,
17 nor of a delineation into those areas as to the
18 development of fish or wildlife or tourism.

19 I am not aware of that.

20 Q. Generally, Mr. Armson, does the
21 Ministry of Natural Resources consider the FRI
22 sufficient to meet the needs of effective management
23 planning - hawking back to your paragraph 5(e) again -
24 with respect to the purpose of the undertaking?

25 A. It is the initial basis for the

1 timber management planning, as I say, with respect to
2 the forest resource and is the basis at the management
3 unit level and then will be supplemented and normally
4 is supplemented by further information.

5 Q. Would you agree with me that while
6 the FRI may be suitable on a provincial scale, it is
7 questionable on a stand basis?

8 A. It is never designed, it is my
9 understanding - and this, Mr. Chairman, would be a
10 subject that will be dealt with in detail in the next
11 panel - but it was never designed, to my knowledge and
12 certainly in any use, to be used at the stand level.

13 Q. I refer you to page 159 of your
14 evidence. You note there that: The FRI, although
15 appropriate on a provincial scale for a first
16 inventory, is subject to a number of weaknesses. And
17 in Roman numeral II you note that it is unlikely to
18 yield reasonable volume estimates for individual
19 stands.

20 A. That is correct.

21 Q. Is that still the case?

22 A. Yes.

23 Q. Just while I am on the topic, I
24 believe in response to a question by Mr. Cosman
25 yesterday you indicated that the graphs that you would

1 be referring to at the time from the FRO 1986 at pages
2 80 and 81 of your evidence are illustrated on an area
3 and not a volume basis; is that right?

4 A. Those specific graphs were, I
5 believe, yes.

6 Q. Thank you. Would you agree that the
7 FRI needs revision in order to link volume to area, it
8 needs greater attention to age and must be updated in
9 the way it is applied?

10 A. Yes, the need for updating is
11 recognized and is undertaken at different time periods.
12 In terms of the area/volume relationships, these are
13 particularly important at the unit and at the stand
14 level and, therefore, are of a different level and need
15 in relation to the unit and stand level than they are
16 in terms of the FRI as a provincial inventory.

17 Q. I believe that was Dean Baskerville's
18 conclusion as well; was it not?

19 A. That's correct.

20 Q. And would you agree that the link
21 between area of harvesting and volume recovered by
22 harvesting that area, is crucial to the successful
23 design and implementation of forest management?

24 A. Yes, and those two documentations are
25 normally available.

1 Q. And wouldn't you agree that in the
2 Ministry this link between area of harvest and volume
3 of harvest needs substantial improvement?

4 A. I think that would vary considerably
5 in terms of the units and the locations and that, in
6 some types of forests that relationship is probably
7 well established and that in other forest conditions
8 that relationship is much weaker.

9 Q. So your testimony is; it is true in
10 some places and not in others?

11 A. That's correct.

12 Q. I believe that was Dean Baskerville's
13 conclusion as well; was it not?

14 A. Yes, I believe that was his
15 statement.

16 Q. Would you also agree, Mr. Armson,
17 that the FRI could be greatly improved as a basis for
18 management design by much greater attention to age;
19 especially to stage of stand development or relative
20 age and by more local application of photo
21 interpretation?

22 A. I am not sure I would agree that the
23 FRI could be greatly improved by greater attention to
24 identifying the age of stands. I believe - and it is
25 my opinion - that at the scale for which the FRI is

1 intended and the categories of age classes which are
2 currently identified in that inventory, that there
3 would not be need for any greater level of detail in
4 term of age classes.

5 At the stand level, and particularly in
6 relation to timber management planning at the unit
7 level, then I would suggest that that is indeed a
8 factor and, in many instances, there is a carrying out
9 of verification of stand ages in many instances.

10 But certainly that is where the greater
11 need would apply rather than at the broad provincial
12 level.

13 Q. And would it be fair to say, Mr.
14 Armson, that much more attention is needed to the
15 establishment of age for each stand if the management
16 design process is to have credibility?

17 A. I think, Mr. Castrilli, in answering
18 that I would say that at the -- in much of the forest,
19 where I have already indicated to the Board the origin
20 of the stand or stands - many of them are aggregate,
21 the stand - can be associated with one single, if you
22 like, initiating force such as fire; that the variation
23 that might occur within, let's say, a stand that
24 resulted from a fire in 1900 - while there may be some
25 variation over a period of, let's say, five or ten

1 years as some new seedlings become planted, that order
2 of variability would not be of any real consequence in
3 terms of both the timber -- either the timber
4 management planning or the utilization of that
5 particular forest.

6 Normally we speak of - if I may pursue
7 this - we speak of even-aged stands and we allow for a
8 variation technically in that of something of the order
9 of perhaps one fifth, but trees within it may be varied
10 by something of the order of 10 to 20 years within a
11 forest that we identify a rotation age of something of
12 the order of 80 or 90 years.

13 Q. Sorry. So that if I am clear on your
14 testimony, I asked you whether much more attention is
15 needed to the establishment of that relationship and
16 that in the absence of establishing that relationship
17 and devoting more attention to it, there is a
18 credibility problem; and your answer was...?

19 A. There is a need -- my answer was
20 there is a need for attention to age classes at --
21 particularly and greater information on age classes
22 often at the unit stand level where the timber
23 management plan is being developed, rather than an
24 attempt to verify ages broadly on FRI throughout the
25 province and more than is done now.

1 THE CHAIRMAN: Mr. Armson -- Mr.
2 Castrilli, I do not want to interrupt your
3 cross-examination, but I realize that some of the
4 questions being put, Mr. Armson, are not capable of yes
5 or no answers, and I realize that some of the answers,
6 in order for you to reply effectively to Mr. Castrilli,
7 will require some embellishment, but I think in some of
8 these questions, the questions put by Mr. Castrilli
9 such as: Is there a credibility gap, are subject to an
10 answer without a corresponding dialogue into something
11 that gets more involved so that Mr. Castrilli has to
12 come back to his original question and that seems to
13 trigger a second corresponding dialogue, and somewhere
14 in there I am losing the answer to the original
15 question.

16 And, again, I know that often in
17 cross-examination where a cross-examiner puts a
18 question, we want a short answer, the witness wants to
19 give a more lengthy answer and, in some cases, it is
20 necessary.

21 But would you try and confine your
22 answers to Mr. Castrilli's questions, unless you feel
23 that they are not capable of a concise answer, in which
24 case I think the Board will be prepared to let you
25 answer it in your own way.

1 Is that going to interfere with your
2 manner of questioning at all Mr. Castrilli?

3 MR. CASTRILLI: No, Mr. Chairman, it
4 would shorten it up considerably.

5 THE CHAIRMAN: Okay.

6 MR. CASTRILLI: Q. Perhaps if I could
7 direct your attention to Exhibit 16, Mr. Armson, that's
8 the Baskerville Report. Page 41, the first full
9 paragraph on the page.

10 Do you have that?

11 A. Yes, I do have that.

12 Q. If I could direct your attention to
13 the last sentence in that first full paragraph?

14 A. Yes.

15 Q. Dean Baskerville states:

16 "Much more attention is needed to the
17 establishment of age for each stand if
18 the management process..."

19 And he said, in brackets:

20 "... (i.e. area regulation) is to have
21 credibility."

22 Could you just advise the Board whether
23 you agree with that statement or not?

24 A. Yes, at that level I do.

25 Q. Thank you.

1 MR. FREIDIN: Where was the quote from, I
2 am sorry?

3 MR. CASTRILLI: Q. Mr. Armson, would it
4 be fair to say that in general there is a need for the
5 FRI to be updated in terms of the way in which it is
6 currently applied, especially with respect to the need
7 for the data base to provide for systematic tracking of
8 wood in its various raw material forms?

9 A. Sorry.

10 Q. Sorry, the question isn't over yet,
11 so that there can be more reasonable reconciliations of
12 records at various stages of the planning and
13 production processes?

14 A. Mr. Chairman, that was a rather
15 lengthy question and it had several elements in there.
16 Forgive me, but I...

17 THE CHAIRMAN: No, I think everyone is
18 having difficulty following the question. Could you do
19 it perhaps in parts or paraphrase the question itself.

20 MR. CASTRILLI: Q. Let me do it this
21 way. I direct your attention to page 44, Exhibit 16.

22 THE CHAIRMAN: That's the last sentence
23 of the second full paragraph?

24 MR. CASTRILLI: Well, actually it is
25 several sentences.

1 THE CHAIRMAN: The last part of that
2 paragraph?

3 MR. CASTRILLI: Q. Beginning ten lines
4 from the bottom of that last full paragraph, beginning
5 "in general...

6 A. In general, yes, I have that.

7 Q. Down to "production processes".
8 Would you advise the Board, once you have an
9 opportunity to read those two sentences, whether you
10 agree or not.

11 A. If I can identify then the three key
12 statements that you put as the question; is that right,
13 Mr. Castrilli, the --

14 MR. WILLIAMS: Excuse me, Mr. Chairman.
15 I think it would be helpful if the sentences he is
16 being asked to comment on are on the record, then we
17 know what it is he is agreeing to.

18 THE CHAIRMAN: Okay.

19 MR. CASTRILLI: Well, I just read it into
20 the record earlier as a question. I don't think I need
21 to read it into the record, again, but if it would
22 help..

23 MR. WILLIAMS: I don't know if he is
24 referring to the same sentence. If he is, fine.

25 THE CHAIRMAN: Well, I do not think it is

1 necessary to repeat it. It is already on the record,
2 Mr. Williams.

3 MR. WILLIAMS: Fine.

4 THE WITNESS: In answer to the first
5 part, Mr. Castrilli - Mr. Chairman, may I take the
6 answers in part?

7 MR. CASTRILLI: Q. Sure.

8 A. In answer to the first sentence, as a
9 question, and the answer is yes. In answer to the
10 second one, I would agree, and there is also an answer
11 of yes to the third one.

12 Q. That's the last sentence in that
13 paragraph; is that correct?

14 A. That is correct. And those items
15 refer to various aspects of the FRI - and, if I might,
16 Mr. Chairman - the first sentence in the paragraph in
17 which those sentences occur states that:

18 "It is worth repeating that the FRI base
19 is not an unreasonable base as used in
20 current forest management planning."

21 Q. Having said that, you also agree with
22 the last three sentences in the paragraph; is that
23 correct?

24 A. Yes, there is the need for
25 improvement, yes.

1 Q. Thank you. Mr. Armson, is it true
2 that the FRI has been substantially misused in terms of
3 estimating individual stand volumes and that this has
4 resulted in considerable confusion over the validity of
5 the FRI?

6 A. In the 1975-1976 period, I recollect
7 that I saw - and I won't say heard - but I saw evidence
8 myself and that is why the statement I made on page 159
9 of the panel statement refers to that.

10 Dean Baskerville refers to it, and I have
11 no cause to think that there has not been a
12 misunderstanding and misuse of the FRI.

13 Q. So the answer to my question is yes?

14 A. Yes.

15 Q. Thank you. Still in the context of
16 your paragraph 5(e), can you advise the Board whether
17 the MNR has improved the FRI to allow for accuracy of
18 volume estimates capable of statistical expression?

19 A. To my knowledge, no.

20 Q. Thank you. Has the Ministry improved
21 of the FRI to allow for an increased number and
22 improved objectivity of sampling?

23 A. The sampling I believe is -- process
24 is the same and I would say that, again, the details of
25 that will be presented in the next panel.

1 Q. You haven't given me a yes or a no.

2 A. The sampling procedure is the same, I
3 understand, it hasn't changed.

4 Q. So it is unchanged?

5 A. Essentially unchanged.

6 Q. So it remains unimproved?

7 A. Yes, unchanged.

8 Q. I asked you: Was it unimproved?

9 A. Well, it has not changed so
10 presumably it hasn't improved.

11 Q. Thank you. Has the Ministry devised
12 a yield table other than Plonski's. For the record
13 that's P-l-o-n-s-k-i-'-s.

14 A. These are -- if I may beg the Board's
15 indulgence - there is not one single yield table.
16 There have been a set of yield tables devised for red
17 pine management in considerable detail for red pine
18 plantations. There has not been a new set of yield
19 tables devised for the species commonly found in the
20 area of the undertaking.

21 Q. So the answer is...

22 A. No.

23 Q. No. Has the Ministry changed its
24 assessment that the FRI overestimates volumes by one
25 third when compared to operational cruise values?

1 A. The statement -- first of all, can
2 have a clarification as to the basis for the statement
3 that it does overestimate by one third.

4 Q. Page 160 of your report?

5 A. Yes, that was a Dr. Raymond and I was
6 quoting Dr. Raymond's conclusion as a result of his
7 study.

8 Q. Do you disagree with Dr. Raymond's
9 conclusion?

10 A. His study applied to a specific area
11 and I cannot say whether it was an overestimate. I
12 know that the two sets of data, and I have looked at
13 them, were different and in the body of his report he
14 does not use the word overestimate, he uses the word
15 difference.

16 Q. Mr. Armson, at page 160, the last
17 paragraph of your evidence, you use the term
18 overestimates in describing and summarizing Raymond's
19 conclusions; am I not correct?

20 A. Yes. He used that term in his
21 report, one part, and then elsewhere when we got into
22 detail he used the word different. But I did cite what
23 Dr. Raymond has said.

24 Q. And you didn't put the qualification
25 in your report that you have just given to the Board;

1 is that correct?

2 A. No, I did not.

3 Q. Thank you. Just generally could you
4 advise the Board what proportions of allocated stands
5 are operationally cruised?

6 A. No, I cannot.

7 Q. Can you advise the Board what
8 proportions of allocated stands rely on FRI solely?

9 A. No, I cannot.

10 Q. Can you advise the Board what
11 proportions of allocated stands apply a correction
12 factor to the FRI?

13 A. No, I cannot.

14 Q. Would you able to advise the Board
15 whether anyone being called by the Ministry will be
16 able to speak to these three matters?

17 A. I cannot give you an indication
18 certainly at this time.

19 MR. CASTRILLI: Mr. Freidin, can you be
20 of any assistance in that regard?

21 MR. FREIDIN: I don't know. I cannot
22 advise as to whether there will be a specific answer to
23 those specific questions.

24 MR. CASTRILLI: That's fine.

25 Q. Mr. Armson, generally would you agree

1 that the planning and implementation of forest
2 management programs in Ontario is seriously hampered by
3 obsolescent and inadequate quantitative and qualitative
4 information in respect of the forest growing stock and
5 the land base upon which it depends?

6 A. All those qualifications - and,
7 again, Mr. Chairman, there were a series of qualifiers
8 and I think some I would answer yes to --

9 THE CHAIRMAN: Perhaps we can assist in
10 this way.

11 If you are going to pose the questions,
12 Mr. Castrilli, that arise from the conclusions or other
13 text material that we have before us, could you refer
14 the witness to that and then ask him whether he agrees
15 or disagrees with it, rather than posing a lengthy
16 question and having to go back and break it up into
17 pieces?

18 MR. CASTRILLI: I will do that with
19 respect to lengthy questions. Could I, in that
20 regard --

21 THE CHAIRMAN: I may have asked for
22 another fifteen exhibits, but...

23 MR. CASTRILLI: I think you would have
24 gotten it in any event.

25 THE CHAIRMAN: Probably.

1 MR. CASTRILLI: Q. Mr. Armson, you are a
2 member of the Ontario Professional Foresters
3 Association; are you not?

4 A. Yes.

5 Q. And you were a member in 1977?

6 A. Yes.

7 Q. I am showing you a document prepared
8 by the Professional Foresters Association dated
9 January, 1977. I presume you are familiar with that
10 document; is that correct?

11 A. Yes.

12 MR. CASTRILLI: Mr. Chairman, I would
13 like to make that the next exhibit.

14 THE CHAIRMAN: Exhibit 63.

15 MR. CASTRILLI: You will note, Mr.
16 Chairman, on a page that is otherwise incapable of
17 being written upon, I left a little white space on the
18 top for where the exhibit number can be written.

19 THE CHAIRMAN: We are truly indebted.

20 MR. CASTRILLI: Mr. Chairman, I am sorry,
21 that was Exhibit 63?

22 THE CHAIRMAN: Exhibit No. 63:

23 ---EXHIBIT NO. 63: Brief on Forest Management in
24 Ontario by the Ontario Professional
25 Foresters Association, dated
January, 1977.

1 MR. CASTRILLI: The Board's indulgence
2 for one moment while I do some housekeeping.

3 Q. Mr. Armson, could I direct your
4 attention to page 7 of Exhibit 63?

5 A. Yes, I have page 7.

6 Q. Would you agree with me that the
7 proposition I read into the record a moment ago was, in
8 fact, the position statement of the Ontario
9 Professional Foresters Association in its January, 1977
10 brief which is now Exhibit 63 to these proceedings?

11 A. Yes, that is correct.

12 Q. This was a brief that was prepared in
13 part in response to your report; was it not?

14 A. Yes, it was.

15 Q. You will note there that there is a
16 reference at the end of that quote to pages 51 to 55.
17 I presume that those are the pages that correspond to
18 pages 157 to 161 of Exhibit 53; is that correct?

19 A. That is correct.

20 Q. Thank you. So in fact the
21 proposition I put to you is in fact your own
22 proposition from your 1976 report; is it not?

23 A. I didn't make those statements. The
24 Association or the people who drafted this document
25 drew upon my words and formed these words. I do not

1 believe I used the word obsolescent.

2 Q. So you don't agree with the OPFA's
3 summary of your report?

4 A. I agree with the statement in part,
5 but not totally. And, if I may, again with the Board's
6 indulgence explain why.

7 The word obsolescent would mean it was
8 essentially out of date by the very nature in which the
9 inventory information - and that is what they were
10 referring to - on a 20-year cycle and without updating.
11 On some units it would be obsolescent, on other units
12 it would not.

13 So, yes, it could be true in terms of
14 inadequate quantitative and qualitative information. I
15 think in general I would agree that the planning had
16 been hampered by an inadequacy there.

17 Q. Now, you didn't dissent from this
18 submission, did you, at the time it was written?

19 A. I don't believe I was asked for my
20 opinion on the submission.

21 Q. Okay. Thank you. On the second
22 point on that page:

23 "Forest inventory techniques and
24 procedures must be improved."

25 The reference is there to pages 55 and 57

1 in your old report, but 161 to 163 in Exhibit 53.

2 Do you agree with that summary?

3 A. Yes.

4 Q. Your answer is yes?

5 A. Yes.

6 Q. Let's move on to another paragraph in
7 your evidence, paragraph 5(f) at page 22.

8 You state there, in part, that the time
9 it takes trees to grow also dictates the need for
10 long-term strategies and long-term funding.

11 I am just trying to understand that
12 paragraph and the implications or the inferences to be
13 drawn from that paragraph. I am wondering if you could
14 simply confirm for me, what I believe you are saying
15 between the lines.

16 Isn't there an assumption that you are
17 making there that the public accepts the Ministry of
18 Natural Resources subsidizing the industry to engage in
19 such activities as regeneration?

20 A. The answer is no.

21 THE CHAIRMAN: Sorry, could I get your
22 question -- your inference that you are drying to draw.

23 MR. CASTRILLI: The inference that I see
24 in paragraph 5(f) is that long-term strategies for
25 funding include funding by the Ministry of Natural

1 Resources for certain industrial activities on Crown
2 forest land such as road building, such as
3 regeneration.

4 Q. And you are saying to me that that is
5 not an inference I should draw from that paragraph?

6 A. No.

7 Q. What do you mean by long-term
8 strategies and funding?

9 A. I mean this - and I relate this back
10 to the length of time it takes to grow a tree to the
11 desired size.

12 If as a landowner, whether I be a public
13 landowner or a private landowner, I grow hybrid poplar
14 on a 10-year or 15-year rotation then the strategy and
15 the funding for growing that on a specific area would
16 be quite different than as a landowner if I am growing
17 black spruce on an 80 to a hundred year rotation and I
18 have different types of investments in terms of both
19 the initiation of that forest, if I am starting with a
20 new one or in development of that forest.

21 And that purely and simply, Mr. Chairman,
22 was what was intended there because I was dealing with
23 the biological relationship to strategies and funding.

24 Q. That's fine, thank you.

25 Paragraph 5(h), same page. You note

1 there the ability to engage in sophisticated resource
2 management planning and the fact that it's dependent
3 upon the ability to collect, analyse and use
4 information.

5 I am just wondering, Mr. Armson, does the
6 concept of collecting, analysing and using appropriate
7 information extend to making such information available
8 to the public?

9 A. Yes, I would think that on public
10 land the information related to it should be generally
11 available.

12 Q. And you would do this in order to
13 allow the public to make independent judgments on how
14 the Crown forest resource is being managed; is that
15 correct?

16 A. Yes, the public - if they have their
17 information - can draw their own conclusions and make
18 judgments.

19 Q. Have you ever suggested in any of
20 your publications that that might be a wasted effort?

21 A. I don't believe I have. And I would
22 suggest that at certain levels of technical detail
23 there is a background information that enters into the
24 judgment -- the making of the judgment, as it does in
25 many professional areas of activity.

1 MR. CASTRILLI: Mr. Armson, I am showing
2 you an article - the date is not on it - but I can
3 advise the Board that it is February, 1979. If you
4 will accept that subject to verification, I would like
5 to make this the next exhibit.

6 THE CHAIRMAN: Exhibit 64.

7 MR. CASTRILLI: (Handed)

8 THE CHAIRMAN: Thank you.

9 How do you want to style this document?

10 MR. CASTRILLI: Article by Mr. Armson
11 dated February, 1979. This is Exhibit 64, Mr.
12 Chairman.

13 THE CHAIRMAN: Yes. Is this your
14 article, Mr. Armson?

15 THE WITNESS: I seem to recognize it,
16 yes.

17 ---EXHIBIT NO. 64: Article by Mr. Armson dated
18 February, 1979.

19 MR. CASTRILLI: Q. Mr. Armson, it has
20 your name at the bottom of the page and your
21 photograph - not a very good one - at the top left-hand
22 corner. It appears to be you; would you agree?

23 A. Yes, it certainly would.

24 Q. For the record, it is a publication
25 of the Canadian Pulp and Paper industry, it is page 16,

1 and the title of the article is: A waste of time to
2 try and alter public opinion on forest management.

3 In paragraph 2 of the article, in the
4 left-hand column, Mr. Armson, you note that:

5 "We have been profligate with the natural
6 forests of Canada. They have been
7 exploited in order to generate capital
8 and therefore have been historically and
9 to the present a major economical force.
10 But a century or more of exploitation has
11 the result of ingrained attitudes among
12 the public, politicians, civil servants,
13 the forest industry and even foresters
14 themselves."

15 When you say in that paragraph 'ingrained
16 attitudes", do I presume that you mean to include
17 ingrained attitudes of exploitation?

18 A. Towards the forest, yes.

19 Q. Column 4 on the same page -- excuse
20 me, Column 1, paragraph 4 on the same page. You state
21 that:

22 "Forest management can only come about
23 when the owner of the forest land and
24 those primarily dependent upon it
25 economically (the Crown and forest

1 industry) commit themselves to investment
2 in terms of money and professional
3 staffing and dedicate themselves to a
4 continuous program of management."

5 And then you say:

6 "With few exceptions, this has not
7 occurred."

8 Are those still your views, Mr. Armson?

9 A. I would say the exceptions are
10 greater in number.

11 Q. In what regard?

12 A. I would include the provinces in this
13 one, certain of the maritime provinces as, since the
14 time of this paper, as having engaged in considerable
15 increases in investment in relation both by government
16 and by industry -- or governments I should say and
17 industry, that there has been a major increase in
18 investment and dedication to timber management.

19 Q. And that's from the period roughly
20 1980 to date?

21 A. Yes, that is correct. I think -- I
22 believe this was...

23 Q. 1979.

24 A. 1979, yes.

25 Q. And what has been the driving force

1 in those changes from 1979 to now?

2 A. I think it has been an increase in
3 the awareness of the owners and those representing the
4 public for Crown lands and also by industry, at least
5 certain major segments of the industry, that in the
6 long-term, the need to provide for a continuous supply
7 of raw material will require major investments and are
8 what I have referred to.

9 Q. Thank you. Column 3 -- excuse me,
10 Column 1, paragraph 3?

11 A. Yes.

12 Q. Exhibit 64.

13 MR. MARTEL: Can I ask a question, Mr.
14 Castrilli?

15 MR. CASTRILLI: Yes.

16 MR. MARTEL: Are you saying - I am trying
17 for clarification - that the real investment came
18 primarily as a result of the long-term benefit for
19 volumes of wood as opposed to taking into consideration
20 the other factors?

21 I add that as my own question.

22 THE WITNESS: If I may, Mr. Martel, the
23 audience I was addressing here were members of the
24 Canadian Pulp and Paper industry and there prime
25 concern obviously was in terms of the timber supply.

1 I would agree with you, sir, that the
2 other values and, indeed, the long-term maintenance or
3 enhancement of those values is equally important.

4 MR. MARTEL: I think you missed my
5 question. My concern - I ask you as an expert - did
6 you perceive at one time that that was the main thrust
7 of the industry; is that what your saying?

8 Their main concern, and I can see that,
9 is for wood, but were they taking into consideration
10 the other values of the forest at the time?

11 THE WITNESS: I don't think for many
12 decades the other values of the forest were a
13 consideration, certainly not a major one by the
14 industries.

15 MR. MARTEL: I just wanted to ask that
16 question.

17 THE WITNESS: That I may say, is
18 changing.

19 MR. MARTEL: Thank you.

20 MR. CASTRILLI: Q. Paragraph 3, the same
21 column.

22 A. Yes.

23 Q. You indicate there that:

24 "Recognition of the necessity for forest
25 management is a cultural and hence a

1 political matter. It is unlikely to
2 arise from the electorate since it
3 consists of two groups - a numerically
4 very small group in forest based
5 communities derives its livelihood
6 largely from exploitation of the natural
7 forests and a second which is an urban
8 population largely uninformed and to a
9 great extent uninterested in the forest.
10 Increasingly in the largest cities this
11 population reflects non-indigenous
12 cultures and backgrounds in which
13 concepts of forest management are alien.
14 I would conclude therefore, that even
15 large-scale public relations and
16 advertising aimed at altering public
17 opinion on the subject of forest
18 management are wasted efforts."

19 Mr. Armson, is it your view that the only
20 way to communicate to the public respecting forest
21 management issues is by way of large-scale public
22 relations and advertising.

23 A. No indeed I don't believe that is the
24 way to communicate and, if I might, I will explain the
25 origin of that remark.

1 At that time the Canadian Pulp and Paper
2 Association, I believe at some considerable cost, had
3 taken out full-page advertisements in the major urban
4 dailies in Montreal, Toronto and Vancouver and perhaps
5 other cities and the full-page advertisement consisted
6 of nothing but fine print and in the centre a
7 photograph of a bull moose and it struck me that that
8 type of large-scale advertising did little to inform
9 the urban population about timber or forest management.

10 Q. So I would presume you would agree
11 with me that public relations and advertising are not
12 the only way to communicate to the public about forest
13 management issues?

14 A. I would agree wholeheartedly.

15 Q. And what about the dissemination to
16 the public of substantive information about the forest?

17 A. I believe that is most important.

18 Q. And that would not be a wasted
19 effort; is that correct?

20 A. No, correct.

21 Q. If dissemination of substantive
22 information to the public is not a wasted effort, does
23 the Ministry of Natural Resources have information for
24 the public on the actual and allocated allowable cut
25 areas and volumes of forest management units?

1 A. For each specific unit--

2 Q. Yes.

3 A. --there is a public document.

4 Q. Is that information in those
5 documents?

6 A. On the allowable cut or demand, it is
7 in those documents that have been prepared,
8 specifically the MAD only and the plans that have been
9 prepared since 1976 but the allowable cut is in the
10 terminology, yes.

11 Q. And is there substantive information
12 available for the public on planned and actual
13 silvicultural treatments and the success of the
14 completed silvicultural treatments?

15 A. There is statistical information on
16 the actual annual amount of the treatments and that is
17 available. On the success, and there I would ask what
18 is meant by success by Mr. Castrilli. I am not...

19 Q. How many trees survive?

20 A. That is not in a general public
21 availability, although that can be made available.

22 Q. And what do you mean by, it can be
23 made available? Is it kept, or is it accumulated by
24 the Ministry?

25 A. Information on that is kept -- is

1 derived at the district or unit level and in main
2 office, where we can access that information.

3 Q. Mr. Armson, can you advise the Board
4 whether the Ministry is going to, in fact, make that
5 information available at this hearing and, if so, which
6 panel?

7 A. Information on that topic will be
8 made available in Panel 4.

9 Q. Panel 4, thank you.

10 If I am clear on your evidence on that
11 point then, that is to be contained or found in what
12 has already been filed with the parties; is that
13 correct, as Panel 4?

14 A. That is right, the evidence is in.

15 Q. Thank you.

16 THE CHAIRMAN: If it is not, I suppose
17 you still have time to pose an interrogatory on that;
18 do you not?

19 MR. CASTRILLI: I already have.

20 THE CHAIRMAN: You already have. Thank
21 you.

22 MR. CASTRILLI: Q. Mr. Armson, would you
23 agree with me that such information is essential to the
24 effective management planning you refer to in paragraph
25 5(e) of your evidence?

1 A. It is essential in the carrying out
2 of timber management, yes.

3 Q. And would you agree with me that it
4 is essential for the public's understanding of the
5 management of the forest resource to have that
6 information as well?

7 A. In terms of their understanding of
8 the management, the degree of detail may or may not be
9 essential. It would be interesting in some respects,
10 but I don't think it is necessarily essential.

11 Q. And do you agree with me that it is
12 essential for this hearing?

13 A. It is important, yes, and essential.

14 Q. Thank you.

15 MR. MARTEL: Could I ask a question
16 again. I do not like to be interfering, but with
17 respect to the public in accepting that timber
18 management is going on, do you not think it would ease
19 the conscience of the people if they knew in fact what
20 the success rates or the failure rates were of our
21 efforts?

22 THE WITNESS: Mr. Martel, if for example
23 the survival of planting stock in the first or second
24 or third year is, let's say, 85 per cent survive -- I
25 will take that as a hypothetical example.

1 MR. MARTEL: Sure.

2 THE WITNESS: That may mean to a lay
3 person a number of different things: It may mean that
4 we have been unsuccessful because 15 per cent of the
5 trees have died. On the other hand, to someone
6 knowledgeable about it, it would mean that under the
7 conditions under which we work and, indeed, in similar
8 jurisdictions that is a very successful survival rate.

9 Whether in fact the trees that survive,
10 as a percentage survival rate, in fact grow through to
11 become part of our inventory is a much more important
12 question and, yet, the survival data in itself doesn't
13 provide that information.

14 So that a lay person if he's told that
15 areas that are regenerated by whatever means, that this
16 amount either percentage or total area, has moved from
17 the regeneration into the forest land base as part of
18 the inventory, is in fact a much more crucial and
19 indeed critical piece of knowledge.

20 MR. MARTEL: But the point I missing --
21 maybe I am not getting my question across to you as
22 well, because there is a concern in the public - and it
23 was expressed to me for many years - that in fact the
24 number of trees that were planted, great numbers of
25 them were in fact dying and there was tremendous

1 resentment I found, in the community I represented,
2 that is such a failure rate, what's going on. I mean,
3 if you are going to invest money to ensure that we have
4 a sustained yield somewhere down the road.

5 People are, I think - and it is only from
6 my own experience - but I think are vitally concerned
7 in knowing that when they go out and plant the small
8 trees that in fact half of them aren't dying. The
9 public really resents when a bunch of trees die shortly
10 after being planted.

11 THE WITNESS: I would agree with you, Mr.
12 Martel, that that is indeed a important fact. In fact
13 in Panel 4 we will be presenting evidence concerning
14 their survival, and if the point - as I understand it
15 of Mr. Castrilli - that we have not made those data
16 more generally available, I would concede that that is
17 an important fact and should be addressed.

18 MR. CASTRILLI:

19 Q. Mr. Armson, do you have -- sorry, Mr.
20 Martel, were you done?

21 MR. MARTEL: Yes, thank you.

22 MR. CASTRILLI: Q. Mr. Armson, do you
23 have Exhibit 29 before you, it is the Statistics, 1987?

24 A. Yes, I do.

25 Q. I wonder if I could just refer you

1 generally to a number of -- rather than refer you to a
2 sweep of pages all at once, I will just ask the
3 question first and then I will direct your attention to
4 the various portions of the document I am referring to.

5 Would you agree that Exhibit 29 reports
6 the hectares and volume cut and the hectares treated
7 and revenue collected?

8 A. Yes.

9 Q. Pages generally are 16 through 21,
10 for example. Your answer is yes?

11 A. Yes, yes.

12 Q. Would you agree that Exhibit 29 does
13 not indicate the success rate of completed
14 silvicultural treatments respecting regeneration?

15 A. That is correct.

16 Q. And perhaps while you are holding
17 Exhibit 29 you could also place Exhibit 31 in front of
18 you, that is Forest Management Agreements, second
19 Five-Year Review.

20 A. Yes, I have that. Second...?

21 Q. Yes.

22 Q. Would you agree with me generally
23 that Exhibit 31 does not include an assessment of the
24 success of silvicultural programs with respect to the
25 survival of trees, the issue we have been talking

1 about?

2 A. I do not -- yes, I do not believe it
3 does. I am certain it doesn't, yes.

4 Q. And now, at page -- back to this, I
5 believe. At page 8 of your evidence, in your setting
6 out of your curriculum vitae and some of your
7 consulting work, you indicate at the bottom of the
8 page -- I will let you catch up, let me know when you
9 are there.

10 A. Bottom of page...

11 Q. Page 8 of Exhibit 53. You indicate
12 there that you were a sub-consultant to FLC Reed in a
13 1978 report entitled: Forest Management in Canada.

14 A. That is correct.

15 Q. And I understand that in Volume II of
16 that report you would have written a chapter on the
17 Englehart management unit?

18 A. Yes, on the jack pine, more
19 specifically on jack pine within that unit.

20 MR. CASTRILLI: Mr. Chairman, I would
21 like to make this the next exhibit, once Mr. Armson can
22 confirm for me that what I am slowing him is, in fact,
23 a copy of his chapter.

24 THE WITNESS: It is.

25 THE CHAIRMAN: Exhibit 65.

1 Q. I would like to direct your attention
2 to what would be page 2-18 of Exhibit 65. You see down
3 the centre of the page, up to five referenced project
4 numbers.

5 For example, under Project 305-04 there
6 is an indication of what was planted and what was
7 applied by way of herbicides and there was an
8 indication of result and it says:

9 "stocking in 1974 was 51 per cent
10 considered unsatisfactory."

11 And then if we go to, say, project 305-12
12 you see the same sort of notations and then we see a
13 heading, or sub-heading called:

14 "RESULT: Stocking in 1974 was 72 per
15 cent."

16 I am just wondering for clarification
17 purposes, Mr. Armson, are these references that I just
18 read the references to result and estimate of the
19 success rate in terms of actual tree survival?

20 A. Yes, they were. And I would point
21 out to the Board that the project 305-04, which had a
22 result in 1974 after treatment of planting in '62 where
23 it was 51 per cent, I point out on the previous page, I
24 had noted that it was only subsequent to 1964, which
25 was two years after that that planting that site

1 preparation became a normal practice.

2 And I believe that the project to which
3 you referred 305-12 established in 1965 and the
4 subsequent ones show quite a different order of
5 magnitude of survival and I would draw the Board's
6 attention to that.

7 This has a relationship to the types of
8 treatment.

9 THE CHAIRMAN: Well, all the other
10 figures down that side of the page, with the exception
11 of 51 per cent, prefer to survival or satisfactory as
12 opposed to unsatisfactory, is that correct?

13 THE WITNESS: Yes, the 72 per cent in
14 project 305-12 and the project 305-16 and project
15 201-94...

16 THE CHAIRMAN: Those are the percentages
17 that survived?

18 THE WITNESS: This was a stocking
19 percentage rather than a survival of planted trees and
20 which is a different measure.

21 MR. CASTRILLI: Q. Well, I thought in
22 answer to my question earlier when I asked you: Was
23 this an estimate of the success rate in terms of tree
24 survival, you said yes.

25 A. You were referring to the survival of

1 trees that are planted; this is a stocking survival
2 which is not a measure of the trees that are planted in
3 itself, it is a measure of the distribution of survived
4 trees.

5 And I am sorry, Mr. Chairman, but this is
6 where we are getting into a technicality that is in
7 fact...

8 THE CHAIRMAN: So, do you mean, you lose
9 a certain amount of trees in shipping before they
10 actually get planted, that kind of thing?

11 THE WITNESS: If I might explain this
12 way. If I plant ten trees anywhere and I go back a
13 year later and there are eight living, then it is 80
14 per cent survival.

15 But if I plant ten trees, or whatever
16 number, we are concerned not only with the survival but
17 with the distribution over the area in which we plant.

18 In other words, if we get 50 per cent
19 surviving in half of the area, or 80 per cent
20 surviving, that doesn't really give us any measure, it
21 gives us only a partial measure of success.

22 So we have two measures: a per cent
23 survival of the trees we plant, which is one thing, and
24 a per cent stocking where trees are located, which is a
25 distribution and the two things are two separate

1 measures, unfortunately both measured by percentage,
2 but one relates to absolute survival and the other
3 relates to, if you like, a survival in relationship to
4 distribution.

5 MR. CASTRILLI: Q. Sorry, sir, this is
6 not -- if I understand your testimony correctly, this
7 is not -- the percentages I read into the record and
8 the others that appear at page 218, this is not an
9 indication of per cent of absolute survival?

10 A. No, it is not.

11 Q. Would it be fair to say that it is a
12 percentage indication of trees planted or trees treated
13 or treatments, I should say?

14 A. It is a measure of the distribution
15 of surviving trees and, in many of our areas, in fact,
16 probably for the majority of planted conifer areas, we
17 consider 60 per cent as an adequate measure of success
18 and, in fact, in certain instances 40 per cent, in
19 terms of the distribution pattern, will be acceptable.

20 Q. I am still confused as to whether
21 either in this report -- well, let's just focus on this
22 report. There is nothing in this report about survival
23 in the absolute sense; is there?

24 A. Of planted trees, no. It is a
25 survival, the data are for stocking, as indicated in

1 the report.

2 Q. May I ask you: Is there information
3 generally published by the Ministry of Natural
4 Resources respecting the absolute success rate of
5 forestry survival?

6 We don't see it in Exhibit 29, we don't
7 see it in Exhibit 31, we don't see it in Exhibit 65.
8 Your testimony is, we will see it in Panel 4?

9 A. You will see data on the absolute
10 survival; not stocking, but absolute survival in Panel
11 4.

12 Q. Thank you. Mr. Armson, returning to
13 paragraph 5(h) at page 22 of your evidence.

14 MR. FREIDIN: What page is it?

15 MR. CASTRILLI: 22.

16 Q. This is still on the topic of
17 information generally.

18 A. Yes.

19 Q. Arising from that sub-paragraph.
20 Would you agree with me that in light of your
21 experience evaluating the Englehart management unit,
22 where you noted the negative effect that regeneration
23 failures can have on the age class distribution -
24 speaking in particular of page 2-19 of Exhibit 65 --

25 A. Yes, I have it.

1 Q. --and future allowable cuts, would
2 you not agree with me that the present method that MNR
3 employs in exhibits such as Exhibit 29, and Exhibit 31
4 of noting the completion but not the success of
5 regeneration efforts, is not a suitable method of
6 reporting to the public the state of the forest
7 management in the province?

8 A. Yes, it is incomplete in that
9 respect.

10 Q. Now, with respect to the FMA
11 five-year reviews and I guess we will simply use
12 Exhibit 31 as an example; do they meet the
13 accomplishment levels specified in your recommendation
14 3.1 at page -- excuse me, at page 134 of your evidence?

15 THE CHAIRMAN: What was that last page
16 number, Mr. Castrilli?

17 MR. CASTRILLI: Page 134 of Exhibit 53.

18 Q. Mr. Armson, you will note at page 134
19 of the recommendation which appears at the bottom of
20 that page 3.1, your recommendation is that in part at
21 five year intervals the conditions, accomplishments, et
22 cetera would be reported, I guess.

23 A. Yes.

24 Q. What did you...

25 A. Yes.

1 Q. I should probably ask you this first.
2 What did you mean by accomplishment at page 134 of your
3 evidence?

4 A. Those would be in general terms, and
5 I specify in there, as I noted, would be such things as
6 obligations to regenerate certain areas in a certain
7 manner, treat areas in terms of tending or maintenance
8 by whatever, areas and a degree over a period that is
9 what I meant there.

10 Q. Did you also mean to include, by
11 using the term accomplishment, absolute tree survival?

12 A. I did not in here detail, nor did I
13 have in mind specific detailed standards necessarily.
14 I felt that those would be dealt with in some part of
15 the agreement and I detail it here.

16 Q. If you were rewriting recommendation
17 3.1 today would you have that in mind, when you use the
18 term accomplishment.

19 A. I would suggest that the existing
20 agreements have, they have standards of accomplishment
21 in the ground rules. We embodied those in there, so if
22 I were to -- I would suggest that I took that into
23 account in the development of the agreements because
24 standards are in each of the agreements.

25 Q. All right, because you have already

1 testified that the agreements -- not the agreements
2 themselves - but the five-year reviews are not
3 producing information with respect to absolute tree
4 survival success rates; is that correct?

5 A. They do not detail it in any tabular
6 form, no, but the review team, it is my understanding,
7 would look at the records at each forest management
8 agreement. I believe they inspected the documentation
9 and the records that were maintained.

10 Q. I ask you why, if they are able to
11 look at this information and I presume the information
12 exists, why aren't they reporting it in the five-year
13 reviews?

14 A. I can't answer that one.

15 Q. Would you agree with me that they
16 should?

17 A. I would agree that it would be useful
18 information, yes.

19 Q. Thank you. So that just to - again
20 keeping in mind we are still talking about your
21 paragraph 5(h) in general respecting information - your
22 testimony is that data on regeneration success; i.e.,
23 absolute tree survival, should be made available to the
24 public on a regular basis through, for example,
25 documents such as Exhibit 31 and, presumably, also

1 through documents such as Exhibit 29?

2 A. The statistical record?

3 Q. Yes.

4 A. Yes.

5 Q. Your answer is yes.

6 A. I would say that that would be useful
7 information.

8 Q. Thank you. And would that be a
9 reasonable condition for the Board to attach to any
10 approval it might make on this application?

11 A. That is for the Board to decide.

12 Q. Well, would you agree that -- well,
13 do you agree it is a reasonable consideration for the
14 Board to have?

15 A. I said, I believe it would be useful,
16 in answer to your question, to have that information.

17 Q. Thank you.

18 MR. CASTRILLI: Mr. Chairman, we are at a
19 convenient place for us to break otherwise I would be
20 embarking on a new and fairly large area of
21 cross-examination.

22 THE CHAIRMAN: Very well, Mr. Castrilli.

23 I think this would probably be a good
24 place to break as well, since we are approaching 2:00
25 p.m.

1 As everyone is aware, we are going to
2 adjourn until next Wednesday at 1:00 p.m. At that time
3 the Board will come back and deliver its ruling with
4 respect to the matter we discussed this morning, we
5 will then proceed immediately thereafter with Mr.
6 Williams, sit later that day and, hopefully, Mr.
7 Williams will complete his cross-examination, and then
8 on Thursday, Mr. Castrilli, we will return to your
9 cross-examination, bearing in mind that Friday morning
10 we have set aside part of the morning to deal with the
11 issue regarding the site visits.

12 MR. CASTRILLI: Mr. Chairman, do you want
13 some -- do you want another prediction from me in terms
14 of length for Thursday, would that be helpful, or
15 should I keep my piece?

16 THE CHAIRMAN: At this time?

17 MR. CASTRILLI: At this time.

18 THE CHAIRMAN: Well, we might as well
19 hear it so that we can digest it over the long weekend.

20 MR. CASTRILLI: I would think that I
21 would be close to taking up most of Thursday.

22 THE CHAIRMAN: But you feel that you
23 might be in a position to complete it Thursday?

24 MR. CASTRILLI: It is possible assuming
25 we are not dealing with other procedural matters at the

1 same time.

2 THE CHAIRMAN: Okay. Well, we will try
3 and reserve Tuesday, except for a brief half hour at
4 the outset --

5 MR. CASTRILLI: Thursday.

6 THE CHAIRMAN: We will try and reserve
7 all of Thursday for your cross-examination. If
8 necessary, we may contemplate sitting later that day so
9 that you can complete it.

10 MR. CASTRILLI: Okay, thank you.

11 THE CHAIRMAN: Very good.

12 Mr. Armson, you are under
13 cross-examination, so during the break you are not to
14 be discussing your evidence with your counsel.

15 THE WITNESS: I understand that, Mr.
16 Chairman.

17 THE CHAIRMAN: Thank you.

18 Thank you, ladies and gentlemen, see you
19 next week.

20

21 ---Whereupon the hearing adjourned at 2:00 p.m., to
22 reconvene on Wednesday, June 15th, 1988, commencing
at 1:00 p.m.

23

24

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